No. 14-1055

IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT
AND BEVERLY HOLLIS-ARRINGTON,

Petitioners,

v.

CENDANT MORTGAGE CORP., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 17, 2015
CERTIORARI GRANTED JUNE 28, 2016

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General Docket
United States Court of Appeals
for the Ninth Circuit

Court of Appeals Docket #: 10-56068 **Docketed:** 07/06/2010
Termed: 10/02/2014
Nature of Suit:
3290 Other Real Property Actions
Crystal Lightfoot, et al
v.
Cendant Mortgage Corporation
Appeal From:
U.S. District Court for Central California, Los Angeles
Fee Status: Paid

CRYSTAL MONIQUE LIGHTFOOT; BEVERLY ANN HOLLIS-ARRINGTON

Plaintiffs – Appellants

v.

CENDANT MORTGAGE CORPORATION, doing business as PHH Mortgage; FANNIE MAE; ROBERT O. MATTHEWS; ATTORNEYS EQUITY NATIONAL CORPORATION,

Defendants – Appellees

Date Filed	#	Docket Text
07/06/2010	1	DOCKETED CAUSE AND ENTERED APPEARANCES

Date Filed	#	Docket Text
		OF APPELLANTS IN PRO SE AND COUNSEL FOR APPELLEES. SEND MQ: No. The schedule is set as follows: Fee due from Appellant Beverly Hollis-Arrington and Appellant Crystal Monique Lightfoot on 07/06/2010. Appellant Beverly Hollis-Arrington and Appellant Crystal Monique Lightfoot opening brief due 10/14/2010. Appellee Attorneys Equity National Corporation answering brief due 11/15/2010. Appellant's optional reply brief is due 14 days after service of the answering brief. [7394802] (JN) [Entered: 07/06/2010 04:00 PM
10/05/2010	7	Received copy of amended notice of appeal from district court. [7499970] (RL) [Entered: 10/06/2010 03:47 PM]
10/21/2010	9	Filed Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot motion to correct the docket as to the participants in this appeal and the issues on appeal

Date Filed	#	Docket Text
		relative to the amended notice of appeal. Declarations of Hollis-Arrington & Lightfoot. Served on 10/19/2010. [7519905] (RL) [Entered: 10/22/2010 03:17 PM]
01/11/2011	13	Filed order (STEPHEN R. REINHARDT and N. RANDY SMITH) Appellants' "motion to correct the docket as to the participants in this appeal and the issues on appeal relative to the amended notice of appeal" is granted. The Clerk shall amend the docket to include all defendants named in the district court. Appellants' motion to consolidate related appeal Nos. 10-56068 and 10-56649 is denied. Appellants' motion to expedite the appeal is denied. Appellants' motion "for court's signature on appellant's *lis pendens*" is construed as a motion for injunctive relief. So construed, the motion is denied. Appellants' motion for an extension of time to file the opening brief is granted. The briefing schedule is as follows: the

Date Filed	#	Docket Text
		opening brief is due February 11, 2011; the answering brief is due March 14, 2011; and the optional reply is due within 14 days of the service of the answering brief. [7608361] (BJB) [Entered: 01/11/2011 03:09 PM]
01/11/2011	14	Entered appearance of Appellees Cendant Mortgage Corporation, Fannie Mae and Robert O. Matthews. [7608389] (HH) [Entered: 01/11/2011 03:17 PM]
02/11/2011	16	Filed original and 7 copies of Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot (Informal: Yes) opening brief of 5 pages. Served on 02/10/2011. [7653393] (FT) [Entered: 02/17/2011 04:21 PM]
02/11/2011	17	Filed Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot excerpts of record in 2 volumes. [7653509]--[Edited 02/17/2011

Date Filed	#	Docket Text
		by BY] (FT) [Entered: 02/17/2011 04:57 PM]
03/14/2011	20	Submitted (ECF) Answering brief for review. Submitted by Appellees Cendant Mortgage Corporation and Fannie Mae. Date of service: 03/14/2011. [7679220]--[COURT UPDATE: Replaced PDF of brief (includes statement of related cases). Resent NDA. 03/15/2011 by TT] (Chilton, Jan) [Entered: 03/14/2011 12:01 PM]
03/24/2011	23	Filed original and 7 copies of Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot (Informal: No) reply brief of 19 pages. Served on 03/22/2011. [7697774] (LA) [Entered: 03/29/2011 11:50 AM]
01/09/2012	30	FILED MEMORANDUM (ALFRED T. GOODWIN, J. CLIFFORD WALLACE and M. MARGARET MCKEOWN) Plaintiffs' motion for a preliminary injunction is denied. Plaintiffs' request for judicial

Date Filed	#	Docket Text
		notice is granted. AFFIRMED. FILED AND ENTERED JUDGMENT. [8023465] (ST) [Entered: 01/09/2012 10:05 AM]
01/20/2012	31	Filed Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot petition for panel rehearing and petition for rehearing en banc. Number of Pages: 16. Served on 01/19/2012. Deficiency: None. (RESEARCH) [8040409] (LC) [Entered: 01/23/2012 10:21 AM]
04/13/2012	32	Filed order (ALFRED T. GOODWIN, J. CLIFFORD WALLACE and M. MARGARET MCKEOWN) We hereby sua sponte withdraw the memorandum disposition filed on January 9, 2012. Appellants' petition for panel rehearing and petition for rehearing en banc are denied as moot. Upon review of the record and the briefing, this court has determined that the appointment of pro bono counsel in this appeal would

Date Filed	#	Docket Text
		benefit the court's review. The court by this order expresses no opinion as to the merits of this appeal. The Clerk shall enter an order appointing pro bono counsel to represent appellants for purposes of this appeal only. Pro bono counsel shall consult with appellants to determine whether: (1) replacement briefing; or (2) supplemental briefing and appellants' previously filed briefs will be submitted to the judges deciding this appeal. The court encourages the submission of replacement briefing rather than supplemental briefing. Appellees shall also file a replacement or supplemental brief, or shall notify the court in writing that appellees stand on the previously filed answering brief. Both parties shall state on the cover pages of the briefs whether they are replacement briefs or supplemental briefs. The parties may file replacement excerpts or supplemental excerpts. If replacement

Date Filed	#	Docket Text
		excerpts are filed, the previously tendered excerpts will be stricken. The absence of replacement excerpts will be treated as a joinder in the previously submitted excerpts. In addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of the Federal National Mortgage Association ("Fannie Mae"), 12 U.S.C. § 1723a(a). Pro bono counsel shall appear at oral argument. The Clerk shall establish a supplemental/replacement briefing schedule. The appeal is stayed pending further order of this court. If appellants object to the court's appointment of counsel in this appeal, appellants shall file a written objection within 14 days after the date of this order [8139068] (SJ) [Entered: 04/13/2012 10:16 AM]
09/17/2012	36	Filed clerk order (Deputy Clerk: KD): Pursuant to this

Date Filed	#	Docket Text
		court's April 13, 2012 order directing the Clerk to appoint pro bono counsel, Thomas Ogden, Esq. is hereby appointed to represent appellants for purposes of this appeal only. The Clerk shall amend the docket to reflect that Thomas Ogden, Esq., The Law Offices of Thomas Ogden, 1108 W. Valley Blvd 6-862, Alhambra, CA 91803, Email: thomas@ogdentaxlaw.com, is pro bono counsel of record for appellants. Within 14 days after the date of this order, pro bono counsel shall register on the court's website for electronic filing/noticing with the Case Management/ Electronic Case Files (CM/ECF) system, if counsel has not already done so. Within 30 days after the date of this order, appellants shall, and appellees may, complete and submit the Ninth Circuit Mediation Questionnaire. See 9th Cir. R. 3-4. The Clerk shall transmit the Mediation Questionnaire to counsel with this order.

Date Filed	#	Docket Text
		Counsel shall return it according to the instructions contained in the Mediation Questionnaire. Supplemental or replacement briefing shall proceed as follows: the opening brief is due November 29, 2012; the answering brief is due January 4, 2013; and the optional reply brief is due within 14 days after service of the answering brief. Appellants' pro se May 15, 2012 motion to correct the docket is denied without prejudice to renewal by counsel. [8326436] (SM) [Entered: 09/17/2012 03:09 PM]
11/29/2012	38	Submitted (ECF) Opening brief for review. Submitted by Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot. Date of service: 11/29/2012. [8420449] (Ogden, Thomas) [Entered: 11/29/2012 05:04 PM]
12/06/2012	43	Filed Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot excerpts of record in 1 volume.

Date Filed	#	Docket Text
		No certificate of service. [8429813] (GV) [Entered: 12/07/2012 10:49 AM]
02/04/2013	46	Submitted (ECF) Answering Brief and supplemental excerpts of record in 1 volume(s) for review. Submitted by Appellee Fannie Mae. Date of service: 02/04/2013. [8498556] (Hacker, Jonathan) [Entered: 02/04/2013 10:57 AM]
06/05/2013	56	ARGUED AND SUBMITTED TO STEPHEN S. TROTT, WILLIAM A. FLETCHER and SIDNEY H. STEIN.[8656050] (BG) [Entered: 06/05/2013 01:19 PM]
10/02/2014	57	FILED OPINION (STEPHEN S. TROTT, WILLIAM A. FLETCHER and SIDNEY H. STEIN) AFFIRMED. Judge: WAF Authoring, Judge: SHS Dissenting. FILED AND ENTERED JUDGMENT. [9262469] --[Edited: Opinion's caption edited. 10/15/2014 by TL] (RMM) [Entered: 10/02/2014 08:15 AM]

Date Filed	#	Docket Text
10/02/2014	58	Filed (ECF) Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot petition for rehearing en banc (from 10/02/2014 opinion). Date of service: 10/02/2014. [9263098] (Ogden, Thomas) [Entered: 10/02/2014 11:40 AM]
10/14/2014	61	Filed order (STEPHEN S. TROTT, WILLIAM A. FLETCHER and SIDNEY H. STEIN) Appellees are directed to file a response to Appellants' Petition for Rehearing En Banc, filed with this court on October 2, 2014. The response shall not exceed 15 pages or 4200 words and shall be filed within 21 days of the date of this order. Parties who are registered for ECF must file the response electronically without submission of paper copies. Parties who are not registered ECF filers must file the original response plus 50 paper copies. [9276261] (SM) [Entered: 10/14/2014 03:27 PM]

Date Filed	#	Docket Text
11/04/2014	63	Filed (ECF) Appellee Fannie Mae response to Petition for Rehearing En Banc, Petition for Rehearing En Banc for re-hearing by en banc only (all active, any interested senior judges). Date of service: 11/04/2014. [9301124]. [10-56068] (Hacker, Jonathan) [Entered: 11/04/2014 01:08 PM]
11/20/2014	64	Filed order (STEPHEN S. TROTT, WILLIAM A. FLETCHER and SIDNEY H. STEIN) Judge W. Fletcher has voted to deny the petition for rehearing en banc; and Judge Trott so recommends. Judge Stein recommends that the petition for rehearing en banc be granted. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc, filed October 2, 2014, is hereby DENIED. [9320988]

Date Filed	#	Docket Text
		(SM) [Entered: 11/20/2014 02:51 PM]
12/15/2014	65	MANDATE ISSUED.(SST, WAF and SHS) [9350178] (JFF) [Entered: 12/15/2014 03:43 PM]
03/09/2015	66	Received notice from the Supreme Court: petition for certiorari filed on 02/17/2015. Supreme Court Number 14-1055. [9450598] (RR) [Entered: 03/09/2015 04:34 PM]
06/28/2016	67	Received notice from the Supreme Court. Petition for certiorari GRANTED on 06/28/2016. Supreme Court Number 14-1055. [10032444] (HH) [Entered: 06/28/2016 02:37 PM]

UNITED STATES DISTRICT COURT for the
CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #:
2:02-cv-06568-CBM-AJWX

Crystal Lightfoot, et al v. Cendant Mortgage, et al
Assigned to: Judge Consuelo B. Marshall
Referred to: Discovery Andrew J. Wistrich
Demand: $75,000
Related Case: 2:00-cv-11125-CBM-AJWX
Case in other court: 9th CCA, 10-56068
Cause: 28:1441 Notice of Removal

Date Filed: 08/22/2002
Date Terminated: 06/11/2010
Jury Demand: None
Nature of Suit: 290 Real Property: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
08/22/2002	1	NOTICE OF REMOVAL by defendant Cendant Mortgage, defendant Fannie Mae from LA Cty Sup Crt (Case Number: LC 0161536) with copy summons and complaint referred to Discovery Robert N. Block. (pc) (Entered: 08/26/2002)
08/22/2002	6	JOINDER by defendant Cendant Mortgage Corporation to removal action [1-1] (nhac) (Entered: 08/28/2002)
08/23/2002	3	JOINDER by defendant Robert O Matthews joining notice of removal of action [1-1] (jp) (Entered: 08/26/2002)
08/23/2002	4	JOINDER by defendant Attorneys Equity Ntl joining notice of removal of action [1-1] (jp) (Entered: 08/26/2002)

Date Filed	#	Docket Text
08/26/2002	11	EX PARTE APPLICATION filed by plaintiffs Crystal Monique Lightfoot, Beverly Ann Hollis-Arrington to remand case back to the Superior Crt; Decls of Crystal Monique Lightfoot, Beverly Hollis-Arrington (jp) (Entered: 08/29/2002)
08/27/2002	12	NOTICE OF MOTION AND MOTION by defendant Fannie Mae, Cendant Mortgage Corp to dismiss; motion hearing set for 9:00 9/23/02 (jp) (Entered: 08/29/2002)
08/28/2002	10	NOTICE OF MOTION AND MOTION by defendant Robert O Matthews to dismiss; PA; motion hearing set for 9:00 9/23/02 (lc) (Entered: 08/29/2002)
09/05/2002	18	MINUTES: In chambers: ORD denying plf ex parte application to remand case back to the Superior Crt [11-1] by Judge Ronald Lew CR:

Date Filed	#	Docket Text
		none (lc) (Entered: 09/06/2002
09/06/2002	21	REQUEST filed by plaintiff for entry of default as to Attorneys Equity Ntl; decl of Beverly Ann Hollis-Arrington & Crystal Monique Lightfoot (lc) (Entered: 09/09/2002)
09/09/2002	22	DEFAULT ENTERED as to defendant Attorneys Equity National Corporation (lc) (Entered: 09/09/2002)
11/18/2002	52	MINUTES: Arguments had. Motion of dfts Fannie Mae, Cendant Mortgage and Robert O Matthews to dismiss [12-1], [10-1] is submitted without oral argument by Judge Consuelo B. Marshall CR: Gary George (el) (Entered: 11/27/2002)

Date Filed	#	Docket Text
2/20/2003	59	ORDER by Judge Consuelo B. Marshall granting defendants Cendant Mortgage Corporation, Fannie Mae and Matthews' motions to dismiss and granting defendants and plaintiff requests for judicial notice [10-1] [12-1] [55-1] [13-1] dismissing party Robert O Matthews, party Fannie Mae, party Cendant Mortgage (lc) (Entered: 02/21/2003)
06/04/2003	70	NOTICE OF MOTION AND MOTION by plaintiff to set aside judgment; declaration of Beverly Hollis-Arrington; motion hearing set for 10:00 7/7/03 (lc) Modified on 09/02/2003 (Entered: 06/05/2003)
08/29/2003	79	ORDER by Judge Consuelo B. Marshall denying plaintiff's motion to set aside judgment [70-

Date Filed	#	Docket Text
		1] (lc) (Entered: 09/02/2003)
09/04/2003	80	NOTICE OF APPEAL by plaintiff Beverly Ann Hollis-Arrington to 9th C/A from Dist. Court order filed 8/29/03 and entered 9/2/03 [79-1], order filed 8/29/03 and entered 9/2/03 [78-1) (cc: Beverly Ann Hollis-Arrington; Michael J. Gilligan; Ralph Shelton; Suzanne Hankins) Fee: Billed (dlu) (Entered: 09/04/2003)
01/05/2004	88	MINUTES OF In Chambers Conference held before Judge Consuelo B. Marshall: Action is removed from the active caseload. (Made JS-6. Case Terminated.) Court Reporter: not reported. (shb,) (Entered: 01/06/2004)

Date Filed	#	Docket Text
01/06/2004	89	MANDATE of 9th CCA filed as to Appeal to Circuit Court, 80, CCA # 0356580. The appeal is affirmed. Mandate received in this district on 1/9/04. (ghap,) (Entered: 01/13/2004)
04/07/2009	92	MOTION TO RESTORE CASE TO ACTIVE CASELOAD FOR THE PURPOSE OF ENTERING FINAL JUDGMENT, pursuant to Rule 54(b, c) of the FRCP to filed by Plaintiff Crystal Monique Lightfoot, Beverly Ann Hollis-Arrington. (lom) Modified on 4/10/2009 (lom). (Entered: 04/10/2009)
10/21/2009	99	JUDGMENT by Judge Consuelo B. Marshall: In accordance with Federal Rule of Civil Procedure 58 and consistent with the Court's "Order Granting Defendants Cendant Mortgage Corporation, Fannie Mae and Matthews' Motions to

Date Filed	#	Docket Text
		Dismiss; And Request for Judicial Notice" 59 , IT IS ORDERED that judgment be entered in favor of Defendants Cendant Mortgage Corporation, Fannie Mae, and Robert O. Matthews. (lom) (Entered: 10/22/2009)
05/27/2010	102	MINUTES: IN CHAMBERS/OFF THE RECORD by Judge Consuelo B. Marshall: The matter before the Court is Plaintiff Crystal Monique Lightfoot's and Beverly Ann Hollis-Arrington's "Motion to Restore Case to Active Caseload for Purpose of Entering Final Judgment: Pursuant to Rule 54(b,c) of the F.R.C.P." [DE 92]. The Court hereby GRANTS Plaintiff's Motion. Plaintiffs are further ordered to show cause no later than Thursday, June 10, 2010 as to why the case shall not be dismissed with prejudice as to Attorneys Equity

Date Filed	#	Docket Text
		National Corporation based on the doctrine of res judicata (See Order for further details). IT IS SO ORDERED granting 92 Motion to Reopen Case (MD-JS5 Case Reopened) (yl) (Entered: 05/27/2010)
06/11/2010	103	ORDER DISMISSING THE ACTION WITH PREJUDICE AGAINST DEFENDANT ATTORNEYS EQUITY NATIONAL CORPORATION based on the doctrine of res judicata by Judge Consuelo B. Marshall. (lom) (Entered: 06/14/2010)
06/11/2010	104	JUDGMENT by Judge Consuelo B. Marshall is entered in favor of Defendant Attorneys Equity National Corporation 103. (MD JS-6, Case Terminated). (lom) (Entered: 06/14/2010)

Date Filed	#	Docket Text
06/11/2010	105	MOTION AND NOTICE OF MOTION pursuant to Rule 60(b): to Set Aside Judgment 99, 104; for fraud upon the court; or in the alternative: an Independent Action for the Court to set aside the Judgment for "Fraud upon the Court," and Motion to set aside the Judgments in cas no. 02-cv-6568 CBM, for fraud upon the Court, 136 filed by Plaintiff Beverly Ann Hollis-Arrington. (lom) (Entered: 06/16/2010)
07/06/2010	109	NOTICE OF APPEAL to the 9th CCA filed by plaintiff Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot. Appeal of Judgment 104. Filed On: 06/11/2010; Entered On: 06/14/2010; Filing fee $ 455 billed. (dmap) (Entered: 07/06/2010)
09/27/2010	117	ORDER by Judge Consuelo B. Marshall: denying 105 Plaintiff Beverly Ann Hollis-Arrington's and

Date Filed	#	Docket Text
		Crystal Monique Lightfoot's " Motion Pursuant to Rule 60(b): To Set Aside Judgment; for Fraud Upon the Court or, in the Alternative; an Independent Action for the Court to Set Aside the Judgment for 'Fraud Upon the Court'" (Rule 60(b) Motion"). (Refer to attached document for details.) (lom) (Entered: 09/28/2010)
10/05/2010	120	AMENDED NOTICE OF APPEAL to 9th CIRCUIT filed by plaintiff Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot. Amending Notice of Appeal to 9th Circuit Court of Appeals 109 Filed On: 07/06/2010; Entered On: 07/06/2010. Fee waived. (dmap) (Entered: 10/05/2010)
12/15/2014	130	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 109, CCA # 10-56068. The judgment of the District Court is

Date Filed	#	Docket Text
		Affirmed. [See document for further information]. Mandate received in this district on 12/15/14. (car) Modified on 12/17/2014 (car). (Entered: 12/17/2014)

CRYSTAL MONIQUE LIGHTFOOT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR

THE COUNTY OF LOS ANGELES

VAN NUYS DIVISION

CRYSTAL MONIQUE LIGHTFOOT BEVERLY ANN HOLLIS-ARRINGTON, Plaintiff, Vs. CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, FANNIE MAE, ROBERT O.	Case No.: LC061596 VERIFIED COMPLAINT FOR: 1) WRONGFUL FORECLOSURE 2) VOIDING OF THE TRUSTEE'S DEED. 3) FRAUD AND DECIET\ (4) RACIAL DISCRIMINATION/ VIOLATION OF THE UNRUH ACT: CIVIL CODE SECTION 51.5(a)*

* This document is presented as filed, all errors are so in the original.

MATTHEWS : (A MARRIED MAN),

ATTORNEYS EQUITY NATIONAL CORPORATION,

Defendants

5) VIOLATION OF C.C.P. 2924 DUE TO FRAUD/QUITE AND ADVERSE POSESSION
6) SALNDER OF TITLE
7) NEGLEGENT MISREPRESENTATION
8) CIVIL CONSPIRACY
9) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
10) ADVERSE POSESSION OF PROPERTY LOCATED AT 7106 MC LAREN AVE, WEST HILLS CALIFORNIA
11) DECLATORY RELIEF

"DAMAND FOR JURY TRIAL"

JURISDICTION AND VENUE

1. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington are, and at all times herein mentioned were, residents of Los Angeles, County, California

2. Defendant Cendant Mortgage Corporation, is, based upon the information and belief of Plaintiffs, a corporation organized under, and existing by virtue of, the laws of an unknown state and is authorized to do business in the state of California.

3. Defendant Fannie Mae, is, based upon the information and belief of Plaintiffs, a private corporation, with a government charter, organized under, and existing by virtue of, the laws of an unknown state and is authorized to do business in the State of California with a corporate office located in Pasadena California.

4. Defendant Attorneys equity National Corporation, is, based upon the information and belief of Plaintiffs, a corporation existing by virtue of, the laws of an unknown state, and is authorized to do business in the State of California, with an office located in Lake Forest, California.

5. Defendant, Robert O. Matthews, is based upon information and belief of Plaintiffs, an individual, who purchased the property located at 7106 McLaren Ave, West Hills, California, from Ed Feldman and Harold Tennen, who were granted the trustee's deed of the aforementioned property in which Plaintiff claims adverse possession.

6. Plaintiff's seek damages in an amount greater than $75,000.00.

FACTS COMMON TO ALL COUNTS

7. Each and every allegation set forth in each and every averment of this pleading hereby is incorporated by this reference in each and every other averment and allegation of this pleading.

8. All acts and/or omissions perpetrated by each defendant in their personal/or official capacity were ratified and approved by all defendants, then and they were acting in the capacity of, agents, servant or employee's of the Corporate defendants with their full consent and ratification. All acts were done with the expressed consent and knowledge of each defendant, and were done with malice, callous, oppressive, reckless and deliberate indifference to the rights of the Plaintiff.

BACKGROUND AND HISTORY

9. On or about July 3, 1999, Plaintiff, Beverly Ann Hollis-Arrington tendered a true and accurate loan application to defendant, Cendant Mortgage Corporation, to refinance her then home located at 7106 McLaren Ave, West Hills, CA 91307. On or about August 23, 1999, the aforementioned loan transaction was funded, recorded and closed based on the information truthfully submitted to Cendant Mortgage Corporation, herein referred to as "Cendant".

10. On or about August 29, 1999, Defendant Cendant submitted this Plaintiffs loan application (which was truthfully submitted) to Defendant, Fannie Mae, by way of their desktop underwriting system. Defendant Cendant, altered the truthful information submitted to them, and in which they relied on to fund the original aforementioned loan. The false information was but is not limited to, the loan to values ratio's, the fact that the Plaintiff had truthfully stated that she was self-employed for most of the year, the fact that Plaintiff was a party to a pending civil action, Plaintiff had several derogatory's on her credit report, there was a prior foreclosure action, as shown on the title report obtained by Cendant Mortgage, and the fact that Plaintiff's reserves were over stated.

    By altering this essential information, defendant Cendant would generate an automatic "Accept" score from the desktop underwriting system of Fannie Mae, without an actual underwriter reviewing the file. A physical review, in all likelihood, should have discovered the aforementioned deficiencies and resulted in a declination by Fannie Mae. Cendant deliberately altered the true information submitted to by them, which was truthfully submitted to Cendant, and in which they funded the loan originally with. Defendant, Fannie Mae, purchased the aforementioned loan, which was truthfully submitted to "Cendant", on or about September 1999. The aforementioned information was provided to Plaintiff, Beverly Ann Hollis-Arrington, upon a written inquiry submitted by Beverly Ann Hollis-Arrington to Fannie Mae, in October 2000.

11. In early September 1999, the exact date is unknown to Plaintiff, Crystal Monique Lightfoot, at this time, Defendant Fannie Mae, purchased the aforementioned loan from Defendant Cendant Mortgage Corporation. After this purchase on the secondary Market, by Fannie Mae, Cendant Mortgage remained the "SERVICER" of the aforementioned loan. On or about September 10, 1999, Plaintiff, Beverly Ann Hollis-Arrington, received a payment coupon book from "Servicer", Cendant Mortgage; the payment coupon erroneously reflected a monthly payment amount of $1370.00. Plaintiffs was unaware of any errors in the calculations of they payments that did exist at this time, or the fraudulent activity on the part of any defendant as it related to the funding or selling of the aforementioned real estate loan.

12. On or about October 2, 1999, Plaintiff, Beverly Ann Hollis-Arrington, became ill with heart problems, coupled with enormous legal expenses. Plaintiff, Beverly Ann Hollis-Arrington's first house payment was due on October 1, 1999. Plaintiffs being unaware of any problems with the loan amount, escrow amount, amount financed and finance charges submitted an application for a forbearance agreement in January 2000. Plaintiff, Beverly Ann Hollis-Arrington was in arrears 3 months at the time she submitted the request to modify her loan.

13. Cendant Mortgage Corporation, who was the "SERVICER" of the loan acknowledged the receipt of plaintiff's request for a forbearance agreement on or about February 20, 2000. "SERVICER",

Cendant Mortgage had performed an end of year review of plaintiff, Beverly Ann Hollis-Arrington's impound account in January 2000, as part of the service agreement and to correct any deficiencies in the amounts due to handle the taxes, hazard insurance, and PMI, if any was due on the account. Defendants, Cendant Mortgage and Fannie Mae were aware at this time that the payment amount had been miscalculated and the payments were short by more than $200.00 monthly. Defendants, Fannie Mae, and Cendant entered into their scheme to deceive Plaintiff, Beverly Ann Hollis-Arrington, at the time they discovered that the payments were short by more than $200.00 a month, In January of 2000.

14. A title search on the property located at 7106 Mc Laren Ave, West Hills, Ca, revealed a substitution of trustee recorded in the office of the Los Angeles County recorder on or about April 24, 2000. A true copy, obtained from the Los Angeles County recorder is attached hereto as exhibit "B". The substitution recites in relevant part that: Cendant Mortgage Corporation, the undersigned is the present beneficiary under the deed of trust substitutes Attorney Equity National Corporation in Place and stead of original trustee.

15. On April 24, 2000, the date of the recording of the substitution of trustee, in the office of the Los Angeles County recorder, "Fannie Mae" was the beneficiary, as all of "Cendants" interest as the beneficiary had been assigned to Fannie Mae in September, or there about, when the aforementioned loan had been sold by "Cendant Mortgage

Corporation", to "Fannie Mae", on the secondary Market. The aforementioned document is false, as Fannie Mae owned this loan at the time of the recording of this document, in the office of the Los Angeles County recorder. Cendant Mortgage was merely the loan "SERVICER" of the aforementioned loan.

15. Between a period of early January 2000 and early May 2000, Plaintiff, Beverly Hollis-Arrington attempted to enter in to a forbearance agreement. "Servicer" Cendant Mortgage Corporation with the approval and ratification of "Fannie Mae" refused to accept any payments from Plaintiff, Beverly Hollis-Arrington, for a five-month period while leading Plaintiff, Beverly Hollis-Arrington, to believe that a forbearance agreement had already been approved.

16. Plaintiff, Beverly Hollis-Arrington was in frequent contact with Kevin Glover, in the loss mitigation department of Cendant Mortgage Corporation. After receiving all documents requested by Mr. Glover, Plaintiff, Beverly Hollis-Arrington, was told by Mr. Glover, that he was approving the forbearance agreement and that he was submitting the package for final approval, with the first forbearance payment due in June of 2000. Mr. Glover stated that a contribution would be required from the Plaintiff as a "good Faith" gesture. Plaintiff relied on these misrepresentations for a period of five months, on May 10, 2000; one day before Plaintiffs home was set for trustee sale, Plaintiff, Beverly Hollis-Arrington received a letter from Cendant Mortgage Corporation, "The Servicer",

stating that the investor, "Fannie Mae", had denied the forbearance agreement.

17. In response to the aforementioned actions by defendants Fannie Mae and Cendant Mortgage Corporation, and the subsequent sale of Plaintiff's residence set for May 11, 2000, Plaintiff, Beverly Hollis-Arrington, filed for chapter 13 in the bankruptcy court to stop the May 11, 2000 sale of the aforementioned property. Plaintiff, Beverly Hollis-Arrington, was unaware of the need for defendants Fannie Mae and Cendant Mortgage to foreclose on her home, due to a miscalculation of her house payment continued to negotiate with Cendant to allow her to cure the default on an accelerated schedule in order to avoid bankruptcy, as there were only two items on the bankruptcy petition. Plaintiff, Beverly Hollis-Arrington, appeared at the 341A meeting in June of 2000, Plaintiff informed the trustee that she was attempting to avoid remaining in bankruptcy by working out an accelerated payment schedule with Cendant Mortgage and Fannie Mae. The chapter 13 Trustee noted the record and stated that she would dismiss with no bar in the event that things did not work out, Plaintiff could file for immediate for protection under chapter 13 again. Plaintiff, Beverly Hollis-Arrington, filed another bankruptcy in July 2000, the IRS filed an erroneous claim for $136,000.00 against plaintiff's July bankruptcy, plaintiff's attempts to resolve the issues with the IRS were unsuccessful; Plaintiff's July Bankruptcy was dismissed with a 180 day bar. Plaintiff, Beverly Hollis-Arrington's, home was again set to trustee sell, for September 18, 2000.

18. Plaintiff, Beverly Hollis-Arrington caused to be recorded in the office of the Los Angeles, county recorder, a quitclaim deed granting title of the aforementioned property, to her daughter, and Plaintiff, Crystal Monique Lightfoot, who at all times resided with Plaintiff, Beverly Hollis-Arrington. On September 11, 2000, a subsequent bankruptcy was filed by Plaintiff, Crystal Monique Lightfoot on September 14, 2000.

19. On September 14, 2000 plaintiff and her daughter caused to be transmitted to Attorneys Equity National Corporation, the purported trustee of Cendant Mortgage Corporation, and the "Servicer" Cendant Mortgage, of the aforementioned loan, a copy of the first page of the bankruptcy petition, stating that A bankruptcy had been filed in the name of Crystal Lightfoot, and informing the "False trustee", Attorney Equity National Corporation, that the property located at 7106 McLaren ave, West Hills, CA had been transfer to Ms. Lightfoot by way of quitclaim deed. Additionally, the United States bankruptcy court sent notice to Cendant Mortgage Corporation and Attorneys Equity service that a bankruptcy had commenced, showing the trustee's sale number and the loan number, as part of the creditors mailing list, this notification was mailed by the bankruptcy court on September 14, 2000.

19. On September 16, 2000 Fannie Mae and Cendant Mortgage Corporation and the trustee ignored all notifications of a bankruptcy and violated the "automatic stay", by preceding with the trustee's sale

on September 16, 2000, of the residence located at 7106 McLaren Ave, West Hills, Ca.

20. On or about October 22, 2000, an agent from coastland realty appeared at the property of Plaintiff, Crystal Lightfoot, to start eviction procedures, agent Young was notified that if a sale had taken place, it was in violation of the bankruptcy automatic stay, and was therefore "VOID".

21. On or about October 18, 2000, Plaintiff, Beverly Hollis-Arrington filed a lawsuit in the United States District Court, Los Angeles, California against "Cendant Mortgage Corporation". The action is currently on appeal to the 9th circuit court of appeals.

22. Defendants Cendant Mortgage, Fannie Mae and attorneys National Corporation, conspired together to reset a trustee sale date of February 6, 2001 and file the notice of rescission of the trustee's upon sale on the same day, February 6, 2001, in which a new trustees sale was scheduled to insure that the property would go back to one of the defendants or a bona fide purchaser, in order to insure that Plaintiff, Crystal Lightfoot, could not refinance or reclaim that property located at 7106 McLaren Ave, West Hills, Ca.

23. On or about October 20, 2000, Andrea Jenkins of the Foreclosure department from Cendant Mortgage Corporation telephoned Plaintiff, Beverly Hollis-Arrington to state that she has postponed the trustee sale, which was set for November 11, 2000, to January 15, 2001, to allow Plaintiffs, to

refinance the property located at 7106 McLaren Ave, West Hills, Ca. This was false, and Ms. Jenkins knew that she was misrepresenting the intention to postpone the trustee sale by Cendant Mortgage, "the Servicer" and Fannie Mae "the Assignee of all beneficiary interest" in the loan.

24. "Attorney's Equity Nation Corporation," the falsely alleged trustee, held the trustee's sale on September 16, 2000, and issued a trustee's deed to Cendant Mortgage Corporation, the trustee's deed was recorded on 8/23/00. Cendant Mortgage claims that they were the beneficiary were false, both Cendant Mortgage as the "Servicer" and Fannie Mae, the "assignee" knew this was false and a misrepresentation of the truth.

A title search conducted at the request of Plaintiff, Crystal Monique Lightfoot revealed, that between a period of September 16, 2000 and February 6, 2001, All defendants, conspired together to hold a trustee sale in violation of the automatic stay, then agreed among themselves (Cendant, Fannie Mae and Attorneys equity Nation Corporation), to withhold the rescission of the trustee's deed upon sale, as required by [Civil code section 1058.5(b)], to restore the condition of the record title and the priority of all liens to the status before the recordation of the trustee's deed.

25. Andrea Jenkins, of Cendant Mortgage Corporation, the "Servicer" and Fannie Mae the "assignee" was aware that the aforementioned loan could not be refinanced, as the title had been transferred by way of the trustee's deed, issued at the trustee

sale, held in violation of the bankruptcy automatic stay, on September 16, 2000. Ms. Jenkins, knew that her representation of a postponed trustee sale was false, and that, Plaintiff, Crystal Lightfoot, could not refinance the property which was transferred by defendants, Cendant Mortgage Corporation, Fannie Mae, And Attorneys Equity National Corporation, who did not restore the condition of the title when they all were informed that the trustee's sale had been invalidated by a pending bankruptcy.

26. Defendants Cendant Mortgage Corporation, and Fannie Mae has entered into an agreement to target "Black" consumers within the State of California, to identify consumers in trouble with their Real Estate loans, Cendant Mortgage or their indirect wholly owned subsidiary steers loans which they know do no meet their credit standards.

27. Cendant Mortgage then manipulates the credit information and makes an "A" paper loan. Immediately after funding the loan that are below credit standards, with delinquencies, prior foreclosure action, no verification of prior payment history and no or little reserves, and a history of being in trouble with making payments on their property. Cendant Mortgage then, submits this information to Fannie Mae by way of the desktop underwriting system. Cendants Mortgage manipulates the information submitted, to Fannie Mae to obtain an automatic "Accept" score.

28. Cendant Mortgage and Fannie Mae then await the "Black" consumer to default on the loan and immediately move in to foreclose.

29. Defendant Attorneys equity National Corporation then with full knowledge of Cendants and Fannie Mae's illegal actions publishes the defaults and trustee's sales. Defendants, Cendant Mortgage, Fannie Mae, and Attorneys Equity National Corporation are all aware of the nefarious plans and illegal acts perpetrated by one another.

30. Defendant Matthews purchased the property located at 7106 McLaren Ave, West Hills, Ca, in which Plaintiff Crystal Lightfoot claims adverse possession. Defendant, Cendant Mortgage, by and through a wholly owned subsidiary, PHH mortgage, also finances Matthews loan, their dba is PHH DBA Cendant Mortgage Corporation.

WRONGFUL FORECLOSURE: AGAINST: CENDANT MORTGAGE: FANNIE MAE AND ATTORNEYS EQUITY NATIONAL CORPORATION

31. Plaintiff, Crystal Lightfoot "ONLY", repeats and repleads paragraph 1 through 31 of the complaint as though fully set forth in this pleading. Plaintiff, Crystal Lightfoot alleges that on June 29, 2001 when the property located at 7106 McLaren Ave, West Hills, Ca was sold by the purported trustee, Attorneys Equity service, Cendant Mortgage who acted as beneficiary to substitute the trustee on the deed of trust was without power to do so. Cendant Mortgage made the substitution by falsely

stating that they were the beneficiaries, when in fact Fannie Mae, was the assignee. Therefore, all acts associated with default and subsequent trustee sale were wrongful, as the trustee was also aware that the actions of the defendants rendered the sale wrongful.

VOIDING OF TRUSTEE'S DEED

32. Plaintiff, Crystal Monique Lightfoot "ONLY" makes the claim to void trustee's deed. Plaintiff, Crystal Monique Lightfoot repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading. Whereas the original deed of trust names First American title insurance company as the trustee, with Cendant Mortgage Corporation as the beneficiary, whereas, the loan of Beverly Ann Hollis-Arrington was sold on the secondary Market on or about September 20, 1999, one month after Cendant Mortgage funded the loan. Fannie Mae, as the assignee, "ONLY" could substitute the beneficiary from First American title insurance corporation. All acts by Attorneys equity National Corporation are "VOID", as they were appointed by Cendant Mortgage, claiming to be the beneficiary.

FRAUD AND DECEIT: AGAINST CENDANT MORTGAGE; FANNIE MAE; AND ATTORNEYS EQUITY NATIONAL CORPORATION

33. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington makes the following allegation for fraud and deceit. Plaintiffs, repleads and repeats paragraphs 1 through 31 as though fully set forth in this pleading.

34. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington makes the following allegations of fraud: On April 24, 2000 the filing of the substitution of trustee by defendant Cendant Mortgage Corporation, Cendant Mortgage knew that this document was false, Cendant Mortgage misrepresented their position as "Servicer" to be the beneficiary, Plaintiff, Beverly Ann Hollis-Arrington and Crystal Lightfoot justifiable relied on this misrepresentation and filed one of five bankruptcies attempting to save the property located at 7106 McLaren Ave, West Hills. Defendant Cendant Mortgage knew or should have known that Plaintiff would rely on this information, which resulted in injury to plaintiff's credit and the ultimate loss of their home.

35. Plaintiffs, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington, repeats and repleads paragraphs 1 through 31 as though fully set forth in this pleading.

36. On or about October 20, 2000, Defendants, Cendant Mortgage, the "Servicer" and Fannie Mae, the

"assignee", by and through employee Andrea Jenkins of Cendants foreclosure department, called plaintiff, Beverly Ann Hollis-Arrington, Ms. Jenkins misrepresented that Cendant and Fannie Mae, would postpone a trustee's sale set for November 2000 to allow Plaintiffs to refinance their home.

37. This in fact was a false representation, Ms. Jenkins of Cendant Mortgage, "the servicer" was aware that defendants Cendant Mortgage and Fannie Mae "the Assignee" had conducted a trustee sale by and through the alleged trustee, Attorneys Equity National Corporation.

38. Defendants acted intentionally to induce Plaintiffs to act on the misrepresentation that the property was in the Plaintiff's name, when in fact Ms. Jenkins knew that, Cendant, Fannie Mae and Attorneys equity National Corporation had conspired together to hold a trustee sale in violation of the automatic stay, and when they became aware of the invalidation of the sale by a pending bankruptcy of Plaintiff, Crystal Monique Lightfoot.

39. Defendants, Cendant Mortgage Corporation, Fannie Mae and Attorneys Equity National Corporation, were aware that the title had not been restored as required by California Civil Code 1058.5(b). Defendant knew that plaintiffs could not obtain refinancing, on property which had been transferred by trustee's deed to Cendant Mortgage Corporation, and recorded on 9/23/00/

40. As a result plaintiffs suffered damages to their credit, with numerous bankruptcies, and the subsequent loss of their home.

RACIAL DISCRIMINATION/ VIOLATION OF THE UNRUH ACT CIV. CODE 51.5(b): AGINST: CENDANT MORTGAGE: FANNIE MAE: ATTORNEYS EQUITY

41. Plaintiffs, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington, repeats and repleads paragraphs 1 through 31 as though fully set forth in this pleading.

    Plaintiffs allege that Cendant Mortgage Corporation, Fannie Mae and Attorneys Equity Nation Corporation, has formed a conspiracy to discriminate against "BLACK" consumers, seeking refinancing of their real property in the State of California.

42. Plaintiffs learned that they had been injured by way of the discriminatory policies toward "BLACK" applicants in despair with their mortgages, in Late September 2001. The unlawful discriminatory scheme seems to work in this fashion, Defendant Cendant Mortgage takes the initial application either directly or indirectly through it wholly owned subsidiary and DBA, PHH. Cendant Mortgage then identifies the race of the applicant by way of the application. If the applicant is determined to be "BLACK", and their credit does not meet the standard to loan on "A" paper, Cendant Mortgage then doctors the application to meet the scoring system, and obtain underwriting,

despite the fact that the "BLACK" applicant is not credit worthy.

43. Defendant Cendant Mortgage then initially funds the loans of the "BLACK" applicant then turns around within 30 days and sells the loans on the secondary market to Fannie Mae.

44. Defendant Cendant Mortgage alters the application to generate an automatic accept score from Fannie Mae. Fannie Mae is aware of this policy, when the "BLACK" applicant defaults on the loan, which in most cases they do and as we did, Fannie Mae takes the property to resale sometimes at a higher value, and other times to bolster their portfolio.

45. Plaintiffs further alleges that the applications are evaluated differently from "WHITE" applicants in that the "BLACK" applicants are considered for non-creditworthiness as opposed to "WHITE" applicants that are considered for creditworthiness.

46. Plaintiffs allege that "BLACK" applicants are discriminated against as they are expected are set up to fail as opposed to white applicants who these defendant set out to help.

47. Plaintiffs allege that they were treated differently from "WHITES" from the beginning of the loan process to the foreclosure of their home. Plaintiffs are both "BLACK"

VIOLATION OF CIV. CODE 2924 DUE TO FRAUD QUITE TITLE AND ADVERSE POSESSION: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE: ROBERT MATTHEWS: AND ATTORNEYS EQUITY NATIONAL

48. Plaintiff Crystal Monique Lightfoot "ONLY" makes the allegation for violation of Civil Code 2924 due to fraud. Plaintiff. Crystal Monique Lightfoot, repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading.

49. California Civil Code set forth a statutory scheme for foreclosing non-judicially on a property. Plaintiff Crystal Lightfoot alleges that defendants, Cendant Mortgage, Fannie Mae and Attorneys Equity National Corporation violated that scheme through fraud.

50. Plaintiff, Crystal Monique Lightfoot alleges that defendants, Cendant Mortgage Corporation, Fannie Mae And Attorneys Equity service conspired together to misrepresent that Cendant was the beneficiary of the loan of Plaintiffs mother, Beverly Ann Hollis-Arrington, Cendant Mortgage set forth a notarized substitution of trustee. Cendant and Fannie Mae knew that this was false.

51. Defendants misrepresented the truthfulness of being the beneficiary with the full knowledge that this was false. Defendants induced Plaintiff's mother to justifiably rely on this misrepresentation, where by she filed 3 bankruptcies in an

attempt to save our home. Thereafter, this plaintiff relied on the misrepresentation and attempted to avoid the sale of the family home by bankruptcy and attempted refinancing.

52. Plaintiff, Crystal Monique Lightfoot was injured in her credit and the loss of her home as a result of the misrepresentation.

53. Plaintiff, Crystal Lightfoot alleges that Cendant Mortgage was without power to substitute a new trustee, as they were the "servicer" of the loan at the time the substitution was recorded and without power to substitute a trustee under the deed of trust in which they assigned all beneficial interest to Fannie Mae when the loan was purchased in September 1999. Therefore, Attorneys Equity was not the trustee and had no power to hold the trustee sale of property located at 7106 McLaren Ave. West Hills, Ca

54. Plaintiff, Crystal Monique Lightfoot "ONLY", asserts that she is the person who has title to the property located at 7106 Mclaren ave, West Hills, Ca. Plaintiff asserts that the aforementioned property had been deeded to her by her mother, Beverly Hollis-Arrington by quite claim deed on September 11, 2000.

55. Plaintiff, Crystal Monique Lightfoot, asserts that Cendant Mortgage falsified the notarized the document filed with the Los Angeles County recorder, stating that "Cendant Mortgage Corporation was the "Beneficiary", when in fact, Cendant Mortgage was the "SERVICER" of the loan, and Fannie Mae

was the beneficiary under an assignment which occurred in September 1999.

56. Plaintiff, Crystal Monique Lightfoot, asserts that when the sale of the property located at 7106 Mclaren Ave, West Hills, Ca was transferred to Ed Feldman And Harold Feldman, by a trustees deed On June 29, 2001, Alleged trustee "Attorneys Equity National Corporation" was not the trustee and had no power to transfer ownership from Plaintiff.

57. Plaintiff, Crystal Monique Lightfoot "ONLY", claims an "ADVERSE CLAIM", in the property commonly known as: 7106 McLaren Ave, West Hills, Ca. The legal description of the property in which plaintiff, Crystal Monique Lightfoot claims "ADVERSE CLAIM" to is: Lot 52 of tract 21399, in the city of Los Angeles, as per map recorded in book 601 pages 42 to 45 inclusive of maps, in the office of the county recorder of said county. Except therefrom all oil, gas mineral and hydrocarbon substances lying below a depth of five hundred (500) vertical feet from the surface of said land but without right of entry to or for said surface, as granted to Morris Kawin, by deed recorded November 26, 1956 in book 52936 page 162, official records, "THE TITLE TOWHICH THIS PLAINTIFF CLAIMS ADVERSE POSESSION.

58. Plaintiff, Crystal Monique Lightfoot, seek a determination as of July 18, 2002 as to her "CLAIM OF ADVERSE POSESSION", title, which is now held by "ROBERT MATTHEWS", a married man.

59. Plaintiff, Crystal Monique Lightfoot "ONLY, alleges that defendant Robert Matthews claim an adverse interest in the aforementioned real property owned by plaintiff, Crystal Monique Lightfoot, that such claim is without right, and that the defendant, Robert Matthews have no estate, title or interest in the property.

SLANDERER OF TITLE: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE AND ATTORNEYS EQUITY NATIONAL CORPORATION

60. Plaintiff, Crystal Monique Lightfoot, "ONLY" repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading.

61. On September 16, 2000, Defendants, Cendant Mortgage Corporation, Fannie Mae and Attorneys Equity Corporation caused to be published a trustee's deed granted to "Cendant Mortgage Corporation". The publication was false the defendants knew it to be false, and made the publication without regard to its truthfulness.

62. Defendants, Cendant Mortgage Corporation, Fannie Mae, and Attorneys Equity National Corporation maliciously published and caused to be published a statement disparaging to the title of this Plaintiff, the statement was reasonable understood to cast doubt upon the existence of this Plaintiffs interest in the property located at: 7106 McLaren Ave, West Hills, CA 91307, as a result of the malicious publication, this Plaintiff suffered

damages in the loss of more than $50,000.00 in equity in the property.

63. Defendants succeeded in casting a legal cloud on the title of the property. Although the sale was "VOIDED" by a pending bankruptcy filed by this Plaintiff, defendants did not rescind the trustees deed for a period of five months, September 16, 2000 through February 6, 2001, therefore the title was not restored to this Plaintiff and there was no way to refinance the property as the title had been vested to "CENDANT MORTGAGE" by the trustee's deed. This action was malicious and calculated to deprive this plaintiff of her interest in the aforementioned property.

64. Defendants recording of the trustees deed dated September 16, 2000 made a false claim to the real property located at 7106 McLaren Ave, West Hills, Ca and was disparaging, as it clouded the title on the property. The document was untrue.

NEGLEGENT MISREPRESENTATION: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE: ATTORNEYS EQUITY NATIONAL CORPORATION

65. Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington, repeats and repleads paragraphs 1-31 as though fully set forth in this pleading.

66. Plaintiff, Crystal Monique Lightfoot, talked with Andrea Jenkins, of Cendant Mortgage foreclosure department on or about October 23, 2000. Plaintiff

explained that the property located at 7106 McLaren had been quite deeded to her by her mother and Plaintiff, Beverly Hollis-Arrington.

67. Ms. Jenkins misrepresented to this plaintiff that she was postponing a trustee sale set for early November 2000, this would give plaintiffs a chance to refinance their home.

68. Ms. Jenkins had no reasonable grounds for believing this representation to be true as she was at all times aware that "Attorney's Equity" had held a trustee's sale on the property on September 16, 2000 in violation of the automatic stay, and transferred the title of the property to "CENDANT MORTGAGE CORPORASTION" and ratified by Fannie Mae.

69. Ms. Jenkins, who represented Cendant Mortgage and Fannie Mae, intended these plaintiffs to rely on this misrepresentation and not seek the help necessary to restore the property and the liens to the status quo, as envisioned by civil code 1058.5(b).

70. Plaintiffs did so justifiably rely on the misrepresentation that the property was in the name of plaintiff, Crystal Lightfoot, and sought refinancing on the property. Plaintiffs were totally unaware that the property had been transferred and remained in the name of Cendant Mortgage Corporation.

71. As aproximate cause of this misrepresentation Plaintiffs were denied all request to refinance the

property although they could find no reason for these denials. Plaintiff suffered damages by lost the equity valued at more than $50,000.00 in the property located at 7106 Mclaren Ave, West Hills, Ca

CIVIL CONSPIRACY: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE: AND ATTORNEYS EQUITY NATIONAL CORPORATION.

72. Plaintiff, Crystal Monique Lightfoot "ONLY", repeat and replead paragraphs 1-31 as though fully set forth in this pleading.

73. Plaintiff Crystal Monique Lightfoot "ONLY" alleges, That defendants, Cendant Mortgage Corporation, Fannie Mae, and Attorney Equity National Corporation formed an operation of conspiracy in furtherance of a common design to injure Plaintiff, Crystal Monique Lightfoot. Plaintiff, Crystal Monique Lightfoot, further alleges that the defendants, Cendant Mortgage, Fannie Mae, and Attorneys Equity National Corporation owed a legal duty of care in foreclosing on the Plaintiffs property located at 7106 McLaren Ave, West Hills, Ca, that aforementioned defendants breached that duty, and as a result, injured this Plaintiff by loss of income, and loss of equity in the property.

74. Plaintiff Crystal Monique Lightfoot, further alleges that the acts of the conspiracy were unlawful, as to racial discrimination, and fraud,

that the aforementioned defendants set out to willfully discriminate against the Plaintiffs as "BLACK" consumers and perpetrate predatory lending on said plaintiffs, by treating the plaintiff, Beverly Hollis-Arrington's loan application differently then "WHITE" applicants, and misusing the foreclosure procedure by way of fraud to purposely publish false statements.

75. Plaintiff, Crystal Monique Lightfoot, further alleges that each of the aforementioned defendants participated directly or indirectly in the conspiracy and approved and or ratified the acts of the other co-conspirators.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS: AGAINST: CENDANT MORTGAGE: FANNIE MAE: AND ATTORNEY EQUITY NATIONAL CORPORATION

76. Plaintiffs allege that it was despicable conduct and a willful and conscious disregard for the Plaintiffs rights for defendants, Cendant Mortgage, Fannie Mae and Attorney Equity National Corporation to wrongfully foreclose on the home of the plaintiffs, perpetrate racial discrimination on the plaintiffs, withhold the filing of the rescission of the trustee's deed from a period between September 16, 2000 to February 6, 2000.

77. It was despicable conduct and willful and conscious disregard for plaintiffs rights for the aforementioned defendants to mislead the plaintiffs on or about October 22, 2000 to believe that the property located at 7106 McLaren Ave, West

Hills, Ca, was still in the name of Crystal Monique Lightfoot, and prevent these plaintiffs from refinancing the aforementioned property.

78. It was despicable conduct and a willful and conscious disregard for the plaintiffs right for the aforementioned defendants with knowledge that the beneficiary was not "Cendant Mortgage" but "Fannie Mae" to willfully record a false substitution in order in a conspiracy to violate California's civil code section 2924 by way of fraud.

79. OPPRESSION (OPPRESSIVE) The despicable conduct of the defendant as set forth above, subjected both plaintiffs to cruel and unjust hardship in conscious disregard of plaintiffs rights for the reasons set forth hereinabove.

80. FRAUD (FRAUDLENT) because defendants, Cendant Mortgage and Fannie Mae intentionally misrepresented to Plaintiffs that the title had not been disturbed and that the plaintiffs were free to obtain refinancing on the property located at 7107 McLaren Ave, West Hills, Ca, while knowing full well that they had help a trustee sale in violation of the automatic stay and willfully withheld restoring the title and encumbrances to the status quo immediately upon learning that the sale had been "INVALIDADTED", was extreme and outrageous conduct unacceptable in a civilized society in which obtaining a real estate loan is an essential element of home ownership. The conduct was intended (or the conduct was so grossly negligent

was to constitute intentional conduct) to cause severe emotional distress and did in fact cause severe emotional distress to plaintiffs.

81. As a proximate result of the conduct of the defendants, and each of them, Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington suffered nervousness, crying spells, sleeplessness all requiring medical treatment and resulting in medical expenses, loss of income, loss of equity in property, loss of property, and general damages all according to proof but in an amount clearly in excess of $25,000.00.

82. The defendants conduct constitute malice, oppression, and fraud as defined in the California Civil Code section 3294, and Plaintiffs should recover, in addition to actual damages, damages to make an example of and punish defendants.

PRAYER FOR JUDGMENT

FIRST CAUSE OF ACTION–WRONGFUL FORECLOSURE

1. For voiding of the trustees deed and restoring a valid and marketable title to Plaintiff, Crystal Monique Lightfoot, and damages in excess of $25,000.00

2. SECOND CAUSE OF ACTION–VOIDING OF TRUSTEES DEED.

3. THIRD CAUSE OF ACTION–FRAUD AND DECIET–For damages in am amount according to proof but in excess of $25,000.00.

4. RACIAL DISCRIMINATION/ VIOLATION OF THE UNRUH ACT–For treble damages in an amount according to proof but in an amount in excess of $25,000.00.

5. VIOLATION OF C.C. 2924 BY FRAUD–"VOIDING" of the trustee's deed. for damages in an amount in excess of $25,000.00; for punitive damages, compensatory damages.

6. STRNDER OF TITLE–For damages in an amount according to proof but in excess of $25,000.00, compensatory damages, punitive damages.

7. NEGLEGENT MISREPRESENTATION–For general damages, punitive damages, exemplary damages, in an amount according to proof but in

excess of $25,00.00, ACTUAL DAMAGES, exemplary damages, punitive damages, for damages according to proof.

8. CIVIL CONSPIRACY–For general damages in excess of $25,000.00

9. ADVERSE POSESSION–DECLATORY RELIEF IN THE FORM OF RESTORING A MARKETABLE TITLE TO PLAINTIFF, CRYSTAL MONIQUE LIGHTFOOT.

VERIFICATION BY PLAINTIFFS

Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington reside in the state of California. Our address is 22912 Hartland Street, West Hills, Ca 91307. We are the Plaintiff in this action and make this affidavit: That we have read the foregoing Verified Complaint and are informed and believe that the matters stated herein are true.

We declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 18, 2002

BY: /s/ CRYSTAL MONIQUE LIGHTFOOT
CHRYSTAL MONIQUE LIGHTFOOT

BY: /s/ BEVERLY HOLLIS-ARRINGTON
BEVERLY HOLLIS-ARRINGTON

" DEMAND FOR JURY TRIAL"

CRYSTAL MONIQUE LIGHTFOOT
BEVERLY ANN HOLLIS-ARRINGTON
22912 HARTLAND STREET
WEST HILLS, CA 91307
TEL: (818) 999-3561
FAX: (818) 316-3359

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON, Plaintiff, vs. CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS, ATTORNEYS EQUITY NATIONAL CORPORATION,	Case No.: CV-02-6568 RSWL (RNBx) EX PARTE APPLICATION TO REMAND CASE BACK TO THE SUPERIOR COURT: THE OBJECTION TO REMOVAL BY BOTH PLAINTIFFS: THE DECLARTIONS OF: CRYSTAL MONIQUE LIGHTFOOT: AND BEVERLY HOLLIS-ARRINGTION IN SUPPORT THEREOF; IN THE ALTERNATIVE; IF REMAND IS DENIED A REQUEST TO TAKE*

* This document is presented as filed, all errors are so in the original.

Defendant

INTERLOCUTORY APPEAL FOR GOOD CAUSE SHOWN.

NOW COMES PLAINTIFFS, CRYSTAL MONIQUE LIGHTFOOT AND BEVERLY HOLLIS-ARRINGTON, IN PRO SE AND WITHOUT THE AID OF COUNSEL, TO FILE THIS EX PARTE MOTION TO REMAND THE CASE IDENTIFIED IN THE SUPERIOR COURT AS LC061596.

On the evening of August 22, 2002, Plaintiffs received a copy of the notice to remove, from Counsel for Fannie Mae and Cendant Mortgage Corporation. The pleading did not contain a case number from the District Court. Plaintiffs notified all Defendant by faxing them notification that this ex parte application would be filed in this office on Friday 8/23/02. On Friday 8/23/02, plaintiffs appeared at the Pro Se office to file an ex parte motion to "REMAND". The clerk found no filing in the District court of the "UNVERIFIED" petition to "REMOVE".

On 8/24/02, Plaintiffs received a joinder with the case number CV-02-6568, although the clerk can find no recorded filing, I refaxed a new notice on 08/25/02 to all defendants.

INTRODUCTION

On July 18, 2002, Plaintiffs, Lightfoot and Arrington file the case herewith discussed in the Superior Court, in the Van Nuys Superior Court. The causes of action are "ALL" State causes of action,

there is not a "DIVERSITY of CITIZENSHIP" question and there are "NO" government defendants. Jurisdiction "CLEARLY" lies in the State Court.

All Defendant, were properly served and the responsive pleading of Attorney's Equity Corporation was due on 08/22/02, Cendant Mortgage Corporation responsive pleading is due 08/23/02, Fannie Mae's responsive pleading is due on 08/24/02.

FANNIE MAE'S FEDERAL CHARTER DOES NOT CONFER AUTOMATIC FEDERAL JURISDICTION WITHOUT A FEDERAL QUESTION OR A CLAIM OF DIVERSITY FROM THE PLAINTIFFS

Fannie Mae has, with "Malice" and forethought, removed this matter from the State Court sighting, USCS title 28 section 1441 as their authority to remove, under their federal charter. However, Fannie Mae is also governed by 28 U S C S, section 1349, which reads in relevant part:

The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the Owner of more than one-half of its capital stock.

"FANNIE MAE" is a private, shareholder owned company. Fannie Mae was created by Congress in 1938 to bolster the housing industry during the Depression. At that time Fannie Mae was part of the Federal Housing Administration (FHA) and authorized to buy only FHA-insured loans to replenish lender's supply of money.

In 1968, Fannie Mae became a private company operating with private capital on a self-sustaining basis. (*See* exhibit "A") Fannie Mae cannot erroneously hold itself out as an incorporated agency "OWNED" by the United States Government.

USCS 28 SECTION 1441 (a) REQUIRES A "VERIFIED PETITION"

USCS 28 section 1441 (a) requires "FANNIE MAE" to "Verify" their petition, consistent with Rule 11 of the Federal Rules of Civil Procedures. Petition has to conform to requirements of law. *Sewing Machine Cos.* (1874) 85 US 553, 21 L Ed 914

ATTORNEYS EQUITY CANNOT JOIN IN THIS MATTER AS THRIR THIRTY DAY HAS EXPIRED FOR THE PURPOSE OF REMOVAL

As of 8/26/02, Plaintiffs have no creditable evidence that this action has been filed with the District Court, however, as of 8/22/02, Attorneys Equity Nation Corporation's thirty days were up. If this "UNVERIFIED PETITION" is just being filed on 08-26/02, Fannie Mae's time has expired to file the "VERIFIED PETITION."

THE IMPROPER AND "BAD FAITH" REMOVAL OF THIS CASE FROM STATE COURT BY FANNIE MAE AND CENDANT MORTGAGE AND THE VIOLATION OF PLAINTIFFS CONSTITUTIONAL AND CIVIL RIGHTS

In general, under 28 USCS section 1441(a), actions may properly be removed from State to federal

court only if Federal District Court would have original jurisdiction over claim in suit. *Jefferson County v Acker*_(1999, US) 144 L Ed 408, 119 S Ct 2069, 99 CDOS 4794, 99 Daily Journal DAR 6179, 1999 Colo J C A R 3766, *reh den* (1999, US) 144 L Ed 2d 826, 120 S Ct 23. Here, there is nothing that vest jurisdiction in the federal Court. The only possible weak link is that "Fannie Mae" A private Corporation with the federal charter, which trades on the NYSE, is involved. There is "NO" federal question, "NO" diversity issues, and "NO" government employees. In enacting 28 USCS section 1441 (a) Congress intended to limit, not extend removability. *Wilkins v Renault Southwest, Inc.* (1964, ND Tex) 227 F Supp 647

Removal statues are to be strictly construed in light of congressional purpose generally to restrict jurisdiction of federal courts on removal. *Rivera v Federacion de Musicos de Puerto Rico, Inc.* (1974, DC Puerto Rico) 369 F Supp 1169, 85 BNA LRRM 2509, 73 CCH LC P 14387.

DEFENDANT ACTIONS ARE SENISTER IN NATURE AND ATTEMPTS TO MAKE A FURTHER MOCKERY OF THE JUDICIAL SYSTEM BY ATTEMPTING TO STEER THIS CASE TO A COURT THAT THEY CONSIDER FAVORABLE TO THEM

Defendant have removed in "BAD FAITH" this case from State Court without following any of the plain language if title 28 section 1441. Plaintiff, Beverly Ann Hollis-Arrington would state for the record that she is currently involved in two appeals, which have been disposed of favorably to these defendant by

Judge Marshall. Plaintiff, Beverly Arrington, states for the record that one issue which will be raised on appeal, consist in part of the ruling by Judge Marshall in "NON-RELATED" case number CV-00-11125CBM. In the courts ruling to set aside the default of Cendant Mortgage who, was represented then and now by attorney, Suzanne Hankins, the court completely "IGNORED" the docketed entries and the file, opting instead to adopt an erroneous position taken by Ms. Hankins. This represents only a small sampling of what Plaintiff, Beverly Arrington, will allege on appeal as prejudicial and what appears to be a deliberate and well thought out attempt to violate her constitutional civil and personal rights, of Plaintiff Beverly Hollis-Arrington.

THIS MATER SHOULD BE REMANDED IMMEDIATELY. BACK TO THE STATE COURT TO AVOID ANY FURTHER PREJUDICE TO BOTH PLAINTIFFS.

Plaintiffs and both of them, request that this matter be returned to State court immediately, in light of the fact that there is "NO FEDERAL JURISDICTION". The court has a duty to inquire into jurisdiction at all stages of case whether parties raised question or not. *Rosenbaum v Bauer* (1887) 120 US 450, 30 L Ed 743, 7 S Ct 633; American United Life Ins. Co. (1941, DC NJ) 40 F Supp 1; *Asbury v New York Life Ins. Co.* (1942, DC Ky) 45 F Supp 513; *Bullock v United States* (1947, DC NJ) 72 F Supp 445.

DEFENDANT HAVE FILE THIS "BAD FAITH" REMOVAL IN AN ATTEMPT TO STEAR THE JUDICIAL PROCESS, TO A COURT WHICH

APPEARS TO FAVORABLE TO THEM, IN VIOLATION TO BOTH PLAINTIFFS CONSTITUTIONAL GUARANTIES OF A RIGHT TO A FAIR SUBMISSION, DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

IN THE ALTERNATIVE: SHOULD THIS MOTION TO REMAND BE DENIED, PLAINTIFFS REQUEST PERMISSION OF THE COURT TO TAKE IMMEDIATE INTERLOCUTORY APPEAL IN THIS MATTER.

Plaintiffs, Crystal Lightfoot and Beverly Hollis-Arrington, request that if this motion to remand this matter back to the Superior Court be denied, the Court allows the taking of an immediate appeal.

Assuming from Defendants filing of a related case statement, their goal is to manipulate this case so that it will be returned to Judge Marshall, as Judge Marshall is aware, there are two appeals pending in the 9th circuit court of appeals for the cases claimed as related in the name of Plaintiff, Beverly Ann Hollis-Arrington. Plaintiff, Arrington has asked the 9th circuit to shorten the briefing schedule, in case number CV-01-5658 for good cause shown with this in mind and in the interest of "JUSTICE", Plaintiffs and both of them seek permission for appeal of the interlocutory order, so that this appeal may be consolidated with the current appeals pending. Plaintiff Arrington has been advised by the 9th circuit court of appeals, that should this request be denied with this brief, she may move for permission of the 9th circuit to hear the appeal of the remand order. Plaintiffs stress the tremendous expense incurred in

their attempts to achieve "JUSTICE" in these matters, we are not a multi-billion dollar "CORPORATION", such as Fannie Mae, nor are we a multi-million dollar "CORPORATION" such as Cendant, however, we are determined that we will have a fair submission at whatever the monetary cost

Respectfully submitted,

DATED: August 22, 2002

BY: /s/ Crystal Monique Lightfoot

BY: /s/ Beverly Hollis-Arrington

DECLARATION OF CRYSTAL MONIQUE LIGHTFOOT

I Crystal Monique Lightfoot declare:

1. I am over the age of 18 years old and I am a Plaintiff in this action

2. I reside at 22912 Hartland Street West Hills, California.

3. I have personal knowledge of the facts contained within this declaration, and if called upon to do so I can and will testify to such.

4. I have never been a party to any action except this one in the Federal Court of any jurisdiction.

5. The causes of action referred to in my complaint are as a result of my constitutional right to litigate my own interest against these defendants.

6. I do not consent to any transfer to the Federal Court, and ask that this matter be returned to State Superior court to determine the issues on their merits.

7. Each day I must fight the ridiculous claims of these defendants, causes me additional prejudice and injury.

I declare under the penalty of perjury, under the laws of the United States of America that foregoing is true and correct.

DATE: August 22, 2002

BY: /s/ Crystal Monique Lightfoot

THE DECLARATION OF BEVERLY ANN HOLLIS-ARRINGTON

I Beverly Ann Hollis-Arrington declare:

1. I am the Co-Plaintiff in this action. I am over the age of 18 years old.

2. I reside at 22912 Hartland Street, West Hills, Ca 91307.

3. I have personal knowledge of the facts contained in this declaration, and if called upon to testify, I can and will do so.

4. On July 17, 2002 case number LC061596 was filed in the Superior court of Van Nuys, California.

5. All causes of action contained in the complaint are State causes of action. We carefully examined each defendant to find that all either reside in, or are authorized to do business in California and have a visible presence within the State of California.

6. The causes of action specified in the complaint identified in the complaint with my name as co-plaintiff represent my interest "ONLY".

7. Plaintiff does not agree to the transfer of this matter and does not in any way waive her right make this and any further argument in matter.

8. Plaintiff, Beverly Ann Hollis-Arrington has acted in "GOOD FAITH" at all times to try to resolve the issues in this matter.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: August 22, 2002

BY: /s/ Beverly Hollis-Arrington

[Filed Clerk, U.S. District Court Feb 20 2003 Central District Of California By Deputy]

[Entered Clerk, U.S. District Court Feb 21, 2003 Central District Of California By Deputy]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISON

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON, Plaintiffs v. CENDANT MORTGAGE CORPORATION dba PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS, ATTORNEYS EQUITY NATIONAL CORPORATION, Defendants	No CV 02-6568-CBM (AJWx) ORDER GRANTING DEFENDANTS CENDANT MORTGAGE CORPORATION, FANNIE MAE AND MATTHEWS' MOTIONS TO DISMISS; AND REQUEST FOR JUDICIAL NOTICE [Docket Nos. 10 and 12] *

* This order disposed of the motions at Dkts. 10 and 12. The order itself is at Dkt. 59.

The matters before the Court, the Honorable Consuelo B. Marshall, Chief United States District Judge presiding, are (1) Defendants Fannie Mae and Cendant Mortgage Corporation's Motion to Dismiss (docket #12) and request for judicial notice (docket #13); and (2) Defendant Matthews' Motion to Dismiss (docket #10). The Court GRANTS Defendants Motions to Dismiss after having considered the parties' papers and oral arguments.

JURISDICTION

Subject matter jurisdiction is based upon 28 U.S.C. §§ 1441 and 1446, and 12 U.S.C. § 1723(a) of the Fannie Mae Charter Act.

BACKGROUND OF INSTANT ACTION

The action concerns real property Plaintiffs Crystal Monique Lightfoot ("Lightfoot") (daughter) and Beverly Ann Hollis-Arrington ("Arrington") (mother) previously owned, but which was sold at a foreclosure sale. Arrington first purchased the property at issue. She financed the purchase with a mortgage from Cendant, who subsequently sold the mortgage to Fannie Mae, retaining servicing status. Cendant later repurchased the loan after Fannie Mae determined that the loan did not meet its criteria. Arrington defaulted on her first payment and failed to make any subsequent payments. She then sought a forbearance.[1] No forbearance was ever granted, and

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[1] Arrington asserts that she was promised, then denied, a forbearance. Cendant asserts that it provided her with information about terms which she then failed to meet.

the loan was foreclosed. Thus, Plaintiffs allege deficiencies in the original financing of their purchase of the property and the subsequent foreclosure and foreclosure sale. Plaintiffs assert that they are the true owners of the real property, entitled to relief against lenders Cendant Mortgage Corporation ("Cendant") and Fannie Mae, as well as current record property owner Robert O. Matthews ("Matthews")

On July 18, 2002, Plaintiff filed the instant action in Los Angeles Superior Court in case no: LC061596. Defendant Fannie Mae petitioned to remove the case to federal district court on August 22, 2002.

On August 26, 2002, Arrington filed an application to remand the matter to state court, which was denied on September 5, 2002.

Defendants Cendant, Fannie Mae, and Matthews presently seek dismissal of the action on the basis of res judicata and collateral estoppel. Defendant Matthews, also seeks in the alternative, dismissal of the action for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6).

PROCEDURAL HISTORY OF RELATED ACTIONS

A. *Beverly Ann Hollis-Arrington v. Cendant Mortgage Corporation, et al., CV 00-11125 CBM (AJWx) ("first action")*

On October 18, 2000, Arrington filed an action in this Court against Defendant Mortgage Corporation and United Guaranty Insurance Company, alleging four causes of action: breach of covenant of good faith and fair dealing, fraud and deceit, negligence, and intentional infliction of emotional distress.

On January 5, 2001, Arrington applied for a temporary restraining order to prevent the foreclosure sale of her property. On January 10, 2001, the Court set Arrington's application for hearing on January 29, 2001, and also ordered that the non-judicial foreclosure sale of the real property be postponed by Cendant until February 6, 2001, a date after the hearing on Arrington's application.

On January 29, 2001, a hearing was held, and on February 1, 2001, the Court issued its Order denying Arrington's application.[2] On February 5, 2001, Arrington filed a Notice of Appeal with the Ninth Circuit Court of Appeals of the Court's order. On July 10, 2001, the appeal was dismissed by the appellate court.

During the pendency of the case, Plaintiffs Lightfoot and Arrington filed bankruptcy petitions. Therefore, the district court case was subject to an automatic stay and was removed from this Court's active calendar on May 5, 2001. On May 25, 2001, Cendant sought and received relief from the automatic stay. The trustee's sale was subsequently held on June 29,

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[2] The Court also set aside a default entered against Defendants Cendant and United Guaranty Insurance.

2001, and the real property was sold to third party purchasers, Ed Feldman and Harold Tennen.

On July 30 and 31, 2001, by stipulation and order, Defendant United Guaranty Insurance was dismissed with prejudice.

On October 21, 2001, the case was returned to the Court's active calendar.

The property was transferred from Arrington to Lightfoot, and then from Lightfoot to herself and Arrington, jointly, while court proceedings were pending.

On May 13, 2002, Cendant filed a motion for summary judgment or, in the alternative, summary adjudication of the issues. Cendant's summary judgment motion was granted on July 15, 2002, and judgment was entered terminating the case.

On July 24, 2002, Arrington filed a Notice of Appeal of the Judgment. The appeal is pending.

B. *Beverly Ann Hollis-Arrington v. Cendant Mortgage Corporation, et al.*, CV 01-5658 CBM (AJWx) ("second action")

On June 27, 2001, Arrington filed a second action against Defendants Cendant, the Fannie Mae Foundation, and First American Title Company. On July 3, 2001, Arrington filed a First Amended Complaint.

On August 16, 2001, defendant First American Title Company was dismissed by Stipulation and Order.

On September 11, 2001, Arrington sought a temporary restraining order to prevent the third party purchasers from evicting her from the property pending the court's determination of her motion to vacate or set aside the foreclosure sale, and a stay pending appeal. On September 14, 2001, Arrington's application was denied. On September 17, 2001, Arrington filed a Notice of Appeal. On November 27, 2001, the appellate court affirmed the district court's order.

On December 3, 2001, Arrington filed a motion to void or to set aside the sale that took place on June 29, 2001 (in the first action). On December 11, 2001, Fannie Mae filed its motion to dismiss.

On February 12, 2002, the Court denied Arrington's motion to set aside the sale, granted in part Fannie Mae's Motion to Dismiss with prejudice, granted to Purchasers' motion to expunge the lis pendens on the Purchasers' title to the property,[3] and Arrington was given leave to file an amended complaint.

On March 12, 2002, Arrington filed a Second Amended Complaint (SAC) against Defendants,

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[3] The third party purchasers were granted leave to intervene on December 4, 2001, to seek a motion to expunge the lis pendens.

Cendant and Fannie Mae, and Attorneys Equity Service Corporation, alleging violations of RICO, the Truth in Lending Act (TILA), Enforcement of Rescission, Real Estate Settlement Procedures Act (RESPA), civil rights 42 U.S.C. § 1983, conspiracy, fraud and deceit, negligent misrepresentation, intentional infliction of emotional distress, violation of California Civil Code section 2924 due to fraud, quiet title, adverse possession and slander of title. Arrington sought: general damages in the sum of $1,000,000, treble damages, exemplary and punitive damages in the sum of $10,000,000, costs of suit, recession of the loan on the property and of the trustee's deed, to invalidate the trustee sale and to offset any balance owed to the lenders.

On March 15, 2002, Defendants Fannie Mae and Cendant filed a motion to dismiss. On May 28, 2002, the Court granted with prejudice, Defendant Fannie Mae's and Defendant Cendant's Motions to Dismiss Plaintiff's RICO, TILA, and Section 1983 claims pursuant to Fed.R.Civ.P. 12(b)(6). *See* Order dated May 28, 2002 (docket #131). The Court declined to rule on the motions to dismiss Plaintiff's state law claims pending responses to the Order to Show Cause why the Court should not dismiss the state law claims having dismissed all federal claims.

On July, 1, 2002, after having received and reviewed the parties' responses to the Courts' OSC, the Court dismissed all remaining state claims against all defendants, as a matter of law or for failure to state a claim. Plaintiff did not provided the Court with any facts suggesting that granting leave to amend would

cure the deficiencies, Plaintiff's clams were dismissed with prejudice. *See* Order dated July 1, 2002 (docket #135). Judgment was entered in favor of Cendant, Fannie Mae, and Attorneys Equity Corporation as to all of Plaintiffs' claims. On July 24, 2002, Arrington filed her Notice of Appeal of the Judgment. The appeal is currently pending.

DISCUSSION

I. Requests for Judicial Notice

A. Standard

Rule 201 of the Federal Rules of Evidence provides that "[a] court shall take judicial notice if requested by a party and supplied with the necessary information." Fed. R. Evid. 201(d). The party requesting judicial notice must show that the fact is "one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Federal courts may take judicial notice of proceedings in other federal courts. *St. Louis Baptist Temple v. F.D.I.C.*, 605 F.2d 1169, 1172 (10th Cir. 1979).

B. Analysis

Defendants request the Court take judicial notice of the (1) entire record from the first action *Beverly Ann Hollis-Arrington v. Cendant Mortgage, et al.*, CV 00-1125 CBM (AJWx); (2) the entire record from the second action *Beverly Ann Hollis-Arrington*

v. Cendant Mortgage, et al., CV 01-5658 CBM (AJWx); (3) the Quitclaim Deed dated September 11, 2000, and recorded September 11, 2000, in the Office of the County Recorder of Los Angeles, California, Instrument No: 00-1422851, transferring title in the subject property from Arrington to Lightfoot; (4) the Quitclaim Deed recorded on February 5, 2001, in the Office of the County Recorder of Los Angeles, California, Instrument No: 01-189024, transferring title in the subject property from Lightfoot to Arrington and Lightfoot; and (5) the Trustee's Deed of Sale dated July 2, 2001, and recorded in the Official Records of the Los Angeles Recorder's Office on July 5, 2001, as Document No: 01-11158333.

The documents are not subject to dispute and are relevant to Defendants' Motions. Accordingly, the Court GRANTS Defendants' Requests.

Plaintiffs request that the court take judicial notice of the following filings from the first action: (1) Cendant's motion for summary judgment; (2) separate statement of undisputed material facts in support of Cendant's motion; (3) declaration of Kevin Glover in support of Cendant's the motion; and (4) Fannie Mae's motion to quash Plaintiff's non-party deposition subpoena.

Plaintiffs' requests are GRANTED.

II. Plaintiffs' Claims are Barred under the Doctrine of Res Judicata

A. Standard

"Res Judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." *Owens v. Kaiser Foundation Health Plaint, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). The doctrine bars a later litigation when the earlier adjudication (1) involved the same claim or cause of action; (2) reached a final judgment on the merits; and (3) involved the same parties or privies. *Nordhorn v. Ladish Co., Inc.*, 9 F.3d 1402, 1404 (9th Cir. 1993).

B. Analysis

1. Same Claims of Causes of Actions

The requirement that both actions involve the same claim is interpreted broadly. "The Ninth Circuit determines whether or not two claims are the same for purposes of res judicata with reference to the following criteria:

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Id. at 1405 (citations omitted). In the instant case, Plaintiffs again challenge Defendants' conduct in connection with the process of Arrington's loan application and the eventual foreclosure of residential property. Plaintiffs have already prosecuted two prior actions concerning the same loan process and eventual foreclosure of their property. Although the current action involves additional or new causes of action, parties[4], and facts[5], it involves the same "transactional nucleus of facts" as the previous actions. *Owens v. Kaiser Foundation Health Plans, Inc.*, 244 F.3d at 714 (central criterion is "whether the two suits arise out of the same transactional nucleus of facts."); *In re Lindsay*, 59 F.3d 942, 952 (9th Cir. 1995) (res judicata applies even if second action involves new evidence of new theories). Plaintiffs' claims allege that the conduct of the defendants in processing the loan and the foreclosure sale were improper and invalid. Thus, the same rights and interests are at issue in the instant case as were adjudicated in the previous actions.

2. Final Judgments were Reached in Prior Actions

A final judgment will have res judicata effect as to all claims that could have been brought in the earlier action. *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d at 713-14 (any claims arising from

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[4] Robert O. Matthews, the new purchaser and current owner of the property.

[5] Cendant improperly substituted a trustee before the foreclosure sale.

same set of facts). The previous judgments entered in the first and second actions as a result of Defendants motions for summary judgment and to dismiss constitute final judgments on the merits. *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.3 (1981) (dismissal for failure to state a claim final judgment for res judicata purposes); *Jackson v. Hayakawa*, 605 F.2d 1121, 1125 n.3 (9th Cir. 1979) (summary judgment final judgment for res judicata purposes).

Plaintiffs contend that because appeals are pending before the Ninth Circuit in both the first and second actions, no final judgment exists to apply res judicata. Plaintiff relies on California's state law of res judicata where a judgment has no preclusive effect until finally disposed of on appeal. *Eichman v. Fotomat Corp.*, 759 F.2d 1434, 1439 (9th Cir. 1985). However, while California state law is applied to determine the preclusive effect of California judgments, federal law is applied to determine the preclusive effect of federal judgments. *Robi v. Five Platters, Inc.*, 838 F.2d 318, 322 (9th Cir. 1988). Under federal law, final judgments have preclusive effect under res judicata regardless of the pendency of appeal. *Eichman v. Fotomat Corp.*, 759 F.2d at 1439; *See also Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 88 (1941). Thus, the requirement that the earlier actions result in a final judgment on the merits is met.

3. Same Parties or Privity with Previous Parties

Res judicata only protects or binds those who were parties to, or were in privity with parties, to the earlier actions. *Jackson v. S.I. Hayakawa*, 605 F.2d 1121, 1125 (9th Cir. 1979); *Cunningham et al., v. Gates, et al.*, 312 F.3d 1148, 1155 (9th Cir. 2003), *petition for cert. filed on other issue,* (Jan. 28, 2003)(No. 02-1129). "Privity — for purposes of applying the doctrine of res judicata — is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" *In re: Schimmels,* 127 F.3d 875, 881 (9th Cir. 1997) (emphasis in original). "And that, under the circumstances, the [other party] 'should reasonably have expected to be bound by the prior adjudication.'" *Cunningham et al., v. Gates, et al.*, 312 F.3d at 1156. Under the first requirement, Plaintiff Lightfoot's interest are so similar to Arrington's, that Arrington was Lightfoot's "virtual representative". *cf., Id.* Defendant Matthews, as a third party purchaser of the property, is also similar to previous purchasers Feldman and Tennen. Thus, Lightfoot has "succeeded to a party's interest in property" and Matthews, as owner of the property, maintains "interests [that] were adequately represented by [the previous intervenor-purchasers of the property] in the original suit." *In re: Schimmels,* 127 F.3d at 881.

Because two earlier actions involved the same claim, the same parties or parties in privity with previous parties, and final judgment on the merits was

entered, the doctrine of res judicata applies. Accordingly, Defendants Motion to dismiss is GRANTED.[6]

III. Defendant Mathews alternative Motion to Dismiss for Failure to State A Claim is GRANTED.

A. Standard

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a defendant to seek dismissal of a complaint, which "fail[s] to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). A motion to dismiss for failure to state a claim must be denied unless it appears that the plaintiff can prove no set of facts that would entitle her to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 796-97 (9th Cir. 1996). Dismissal is appropriate if the plaintiff fails to assert a cognizable legal theory or to allege sufficient facts under a cognizable legal theory. *Balisteri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). All material factual allegations in the complaint are assumed to be true and construed in the light most favorable to the plaintiff. *Cooper v. Pickett*, 137 F.3d

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[6] Defendants similarly argue that Plaintiffs are barred by "collateral estoppel". Collateral estoppel or "issue preclusion" "attaches only '[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment.'" *Amadeo v. Principal Mutual Life Insurance Company*, 290 F.3d 1152, 1159 (9th Cir. 2002). These issues were previously litigated. For the same reasons set forth for the Court's dismissal based on the doctrine of res judicata, the Court alternatively GRANTS Defendants motions to dismiss based on collateral estoppel.

616, 622 (9th Cir. 1997); *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1152 (9th Cir. 1989).

B. Analysis

Plaintiff Lightfoot alleges Defedants foreclosure was fraudulent. Thus, Attorneys Equity was not the trustee and had no power to hold the trustee sale of the property. Instead, Plaintiff Lightfoot asserts that she is the person who has title to the property. Thus, Defendant Matthews who claims rights to the property is without right, and has no estate, title, or interest in the property. Defendant Matthews argues that Plaintiffs failed to state a claim against him as he is a bona fide purchaser of the property.

Based upon the history of the present and previous related cases, the Court's rulings, and the instant finding that res judicata applies, there is no basis for Plaintiffs claim against Defendant Matthews. Defendant Matthews' alternative motion to dismiss, is GRANTED, with prejudice.

CONCLUSION

Defendants have demonstrated (1) that there were two previous actions regarding the same claim involved in this case, between the same parties or parties in privity with previous parties, which were resolved on the merits; and (2) that Plaintiffs have failed to state a claim against Defendant Matthews upon which relief can be granted;

Defendants Motions to Dismiss are GRANTED.

IT IS SO ORDERED

DATE: February 20, 2003

/s/ Consuelo B. Marshall, Chief Judge
United States District Court

[FILED CLERK, U.S. DISTRICT COURT AUG 29, 2003 CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY]

[ENTERED CLERK, U.S. DISTRICT COURT SEP 2, 2003 CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISON

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON,	No CV-02-06568-CBM (AJWx)
Plaintiffs v. CENDANT MORTGAGE CORPORATION dba PHH MORTGATE, FANNIE MAE, ROBERT O. MATTHEWS, ATTORNEYS EQUITY NATIONAL CORPORTATION, Defendants	**ORDER DENYING PLAINTIFF'S MOTION TO SET ASIDE THE JUDGMENT** [Docket No. 70] *

* This order disposed of the motions at Dkt. 70. The order itself is at Dkt. 79.

The matter before the Court, the Honorable Consuelo B. Marshall, Chief United States District Judge presiding, is Plaintiff Beverly Ann Hollis-Arrington's Motion to Set Aside the Judgement Due to Fraud and Newly Discovered Evidence.

The Court having considered the parties' papers hereby DENIES Plaintiff's Motion to Set Aside the Judgment.

BACKGROUND

Plaintiff Beverly Ann Hollis-Arrington ("Arrington") filed a total of three cases against Defendant Cendant Mortgage Corporation that have been decided by this Court. The instant case is the third of the three cases. Plaintiff has filed a motion to set aside the judgment in each of the three cases.

This action arises out of a loan to refinance an existing first and second mortgage on real property located at 7106 McLaren Avenue, West Hills, California (the "Property"). In August 1999, Cendant funded a loan in the about of $180,400 secured by the Property on behalf of Plaintiff. Almost immediately after funding, Cendant sold the loan to the Federal National Mortgage Association ("Fannie Mae") in the secondary market. Cendant retained the servicing rights. Plaintiff's loan went into default in October 1999. In December 1999, Cendant provided Plaintiff with information regarding programs to assist in curing delinquency. Plaintiff then requested a forbearance agreement from Cendant. In February 2000, Cendant acknowledged Plaintiff's request and sought additional information, including a financial

statement and hardship letter. Ultimately, Plaintiff was not given a forbearance agreement based on Plaintiff's financial status and inability to provide a sufficient contribution to any forbearance. In August 2000, Cendant repurchased the loan from Fannie Mae because it failed to meet Fannie Mae requirements.

On October 18, 2000, Arrington filed the first action (CV 00-11125) against Defendant Cendant Mortgage Corporation ("Cendant") and United Guaranty Insurance Company ("United"), alleging four claims: breach of the covenant of good faith and fair dealing, fraud and deceit, negligence, and intentional infliction of emotional distress. Plaintiff's claims appear to be predicated on the contention that Cendant agreed to provide Plaintiff with a forbearance agreement when she fell behind on her mortgage payments and subsequently refused to enter into such an agreement.

On June 27, 2001, Arrington filed the second case against defendants (CV 01-5658). In the second case, Arrington alleged that Cendant, in a conspiracy with Fannie Mae, sought to make mortgage loans to non-creditworthy black borrowers for the sole purpose of causing the borrowers to default on the loans and enabling Fannie Mae to foreclose and acquire the real property. Arrington alleged violations of RICO, the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), 42 U.S.C. § 1983, fraud, negligent misrepresentation, intentional infliction of emotional distress, intentional infliction of California foreclosure status, quiet title , and slander of title.

On May 28, 2002, in the second case, the Court granted Cendant's motion to dismiss Arrington's federal claims for violation of RICO, TILA, RESPA and 42 U.S.C. § 1983. On July 2, 2002, the Court entered judgment in favor of Cendant on all of Arrington's claims.

On July 15, 2002, in the first case, this Court granted summary judgement for Cendant and entered judgement.

Arrington and her daughter Monique Crystal Lightfoot filed the instant case, the third case, on July 18, 2002 in Los Angeles County Superior Court naming Cendant, Robert O. Matthews, and Attorneys Equity National Corporation. The third case reiterated the same contention as the second action, the Cendant conspired to provide loans to uncreditworthy black applicants. The third case was removed to federal court and on February 20, 2003, the Court granted Cendant's motion to dismiss the third action on the grounds of *res judicata* and collateral estoppel.

Arrington filed Noticed of Appeal in each of these three cases. The Ninth Circuit Court of Appeals affirmed the judgment in the first two cases and dismissed the third appeal for lack of jurisdiction.

Following these decisions by the Ninth Circuit, on June 4, 2003, Arrington filed a "Motion Pursuant to Rule 60(b)(2)(3) of the Federal Rules of Civil Procedure to Set Aside the Judgment due to Fraud and Newly Discovered Evidence" in each of the three

cases. Defendant Cendant Mortgage filed a timely opposition to Plaintiff's motion and a timely reply was filed.

LEGAL STANDARD

Federal Rule of Civil Procedure 60(b) provides that:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (2) newly discovered evidence which by due diligence could not have been discovered in time to more for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party ... The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

Fed.R.Civ P.60(b).

A party making a Rule 60 motion must show the evidence (1) existed at the time of trial or when the order was entered; (2) could not have been discovered through the exercise of due diligence; and (3) was of such magnitude that the production of it would have been likely to change the disposition of the case. *See Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 210-211 (9th Cir. 1987). A motion under 60(b) must be made within one year of the

entry of the judgment or order that the party seeks to set aside. *See Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 488-89 (9th Cir. 2000) (district court did not abuse discretion in denying motion as untimely where motion was filed fourteen days after deadline for post-trial motions). A pending appeal will not toll the one-year period. *See Corn v. Guam Coral Co.*, 318 F.2d 622, 629, n. 13 (9th Cir. 1963).

DISCUSSION

Plaintiff moves to set aside the judgement in this case, pursuant to Rule 60(b)(2) and (3), on the following newly discovered evidence and alleged act of fraud by defendants: (1) A "Substitution of Trustee" document recorded in the Los Angeles County Recorder's office on April 24, 2000; (2) A trustee's deed recorded in the Los Angeles County Recorder's office on September 21, 2000 for assessor's parcel number 2026-003-013; (3) A "Notice of Rescission of Trustee's Deed Upon Sale" recorded on February 8, 2001. Plaintiff attached a Lexis-Nexis printout of these recorded documents to her declaration in support of the motion.

A. Plaintiff's Alleged "Newly Discovered Evidence and Fraud" Could Have Been Discovered At Or Prior To The Time Judgment Was Entered.

The Court issued an Order dismissing Plaintiff's Complaint in this action on February 20, 2003. First, it is clear from the face of the "newly discovered evidence" and alleged fraud that these documents and the fraudulent inferences plaintiff attempts to make from them, could have been discovered through the

exercise of diligence prior to the entry of judgment. The documents are public recordations available to members of the public that seek their production. Additionally, plaintiffs own submission of the documents as printouts from Lexis-Nexis indicates that, prior to entry of judgement in this proceeding, plaintiff could have obtained copies of these documents.[1]

Because plaintiff could have discovered the facts constituting the "new evidence" and "fraudulent acts" prior to the entry of judgment, plaintiff has failed to demonstrate that the judgment should be set aside pursuant to Rule 60(b).

B. Production of the Alleged New Evidence Would Not Have Changed The Outcome of the Case.

Even if plaintiff could demonstrate that the evidence produced in her motion could not have been discovered upon the exercise of due diligence, she must demonstrate that the evidence submitted is of such a magnitude as to change the outcome of this case. Upon review of the evidence submitted, the Court finds that production of these documents would

---

[1] Additionally, plaintiff's complaints in the second case and this case indicate that plaintiff was aware of the underlying acts by defendants (substitution of trustee, trustee's deed on the parcel, and rescission of trustee's deed) at the time those cases were filed. *See* CV 01-5658, Second Amended Complaint ¶ 42; CV 02-6568, Complaint ¶ 14, ¶ 19, ¶ 67. Therefore, this motion was not raised within a "reasonable time" after entry of judgment because plaintiff had this information since the filing of this case. *See Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981).

not have changed the Court's finding that defendants were entitled to dismissal of plaintiff's claims in this action.

CONCLUSION

For the Foregoing reasons, the Court DENIES Plaintiff's Motion Pursuant to Rule 60(b) to Set Aside The Judgment.

IT IS SO ORDERED.

DATE: August 29, 2003

/s/ CONSUELO B. MARSHALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BEVERLY ANN HOLLIS-ARRINGTON; Plaintiff, Vs. CENDANT MORTGAGE CORP; FANNIE MAE CORPORATION; ROBERT O. MATTHEWS (A MARRIED MAN): ATTORNEYS EQUITY NATIONAL CORPORATION; Defendants	Case No.: No. CV-02-06568 CBM (AJX) MOTION AND NOTICE OF MOTION PURSUANT TO RULE 60(b): TO SET ASIDE JUDGEMENT; FOR FRAUD UPON THE COURT OR IN THE ALTERNATIVE; AN INDEPENDENT ACTION FOR THE COURT TO SET ASIDE THE JUDGEMENT FOR "FRAUD UPON THE COURT" ***THIS MOTION IS BEING FILED CONCURRENTLY WITH PLAINTIFF'S ANSWER TO THE COURTS ORDER; TO SHOW CAUSE IN CASE

* This document is presented as filed, all errors are so in the original.

NUMBER: 02CV6568 CBM;

AND

MOTION TO SET ASIDE THE JUDGMENTS IN CASE NUMBER 02-CV-6568CBM, FOR FRAUD UPON THE COURT

Courtroom:
Hearing date:

Comes now plaintiff, in pro se and without the advice of counsel, to file this motion pursuant to; F.R.C.P. rule 60(b) to set aside the judgement in the aforementioned case, for fraud upon the court. Or in the alternative; an independent action for "Fraud Upon The Court".

PREFACE

Plaintiff, is filing this motion concurrently with a motion seeking the same relief in cases number 00-Cv-11125CBM, 01-CV-5658CBM, and along with the order to show cause issued by the court in case number 02-CV-6568CBM.

Plaintiff would like to state for the record and to preserve for appeal, in the event this motion is denied the extreme prejudice that has been caused by the actions of these defendant's and their counsel.

Additionally, Plaintiffs alleges that they has suffered a violation of their constitutionally protected rights of their property being taken without due process of law, their right to access the court, and her right to the equal protection of the law by way of the alleged fraud upon the court, perpetrated by these defendants.

INTRODUCTION

In October 2000, a time before the housing bubble busted, and millions of homeowners lost their homes to the unscrupulous actions of banks and lenders, Plaintiff cane to this court seeking the courts intervention, to force Cendant Mortgage to abide by a verbal forbearance agreement made with this plaintiff. In the alternative, Plaintiff sought temporary restraining order, against the immediate sale of her home, for 60 days until Plaintiff could obtain refinancing on the property.

During the time of these negotiations with Cendant Mortgage Corporation (now PHH mortgage) Plaintiff was unaware that her loan was not owned by Cendant Mortgage Corporation, but was instead owned by Fannie Mae, that Cendant Mortgage was the servicer, not the owner of the loan. Cendant Mortgage did not become the owner of the loan until ordered to repurchase 10/2000. Plaintiff will ask this court to keep in mind, that since she first came to this court seeking help to save her home, the United Stated has been plunged into a global recession, created by the housing market. In addition, Fannie Mae has been put into receivership by the U.S. Government, and Cendant Corporation has spun its mortgage unit off to PHH Mortgage.

TIME LINE AS TO THE FRAUD UPON THE COURT

In August 1999 Plaintiff, Hollis-Arrington refinanced her home located at 7106 McLaren Ave., with Cendant Mortgage Corporation. (Successor in interest is PHH Mortgage Corporation). Deed is attached here to as exhibit "A". On or about 60 day after the abovementioned date, the loan was sold on the secondary market to Fannie Mae, and Cendant retained the servicing rights.

On or about January 2000 Cendant Mortgage false and fraudulently declared themselves, the duly appointed and current beneficiary, and then filed a notice of default against the property listed above. On 0r about January 18, 2000, Cendant Mortgage executed a substitution of trustee, which was signed by

one Mark Hinkle, vice president of Cendant Mortgage Corp. and notarized by one Andrea P. Finkle in the State of New Jersey. This false and fraudulent filing, gave Attorney's Equity National Corporation the fraudulent power to notice a trustee's sale (attached hereto as exhibit "B")

Pursuant to C.C. section 2924 and the applicable provisions of the internal code, the trustee was obligated to order a Trustee's sale Guaranty from a title company. This document assures that the lender and trustee are made aware of necessary information regarding the present condition of title, and addresses for notices to all parties of interest.

In that respect, it is unclear how Attorney's Equity could have been duped into holding a fraudulent trustee's. Plaintiff will await their response to this motion for further comment.

On 4/21/2000 Attorney's Equity, utilized its fraudulent appointment as trustee, to notice a trustee's sale for May 11, 2000. Plaintiff, Hollis-Arrington filed her first bankruptcy in response to this fraudulent trustee sale on May 5, 2000. Cendant responded to the bankruptcy court with its demand and the statement that they had conducted a proper foreclosure process as articulated by California's statutory foreclosure scheme. When in fact the filing of the fraudulent substitution of trustee rendered the foreclosure "VOID" as opposed to "VOIDABLE"

On July 11, 2000 Plaintiff Hollis-Arrington filed another bankruptcy to stave off the fraudulently postponed original trustee sale of May 11, 2000.

Plaintiff was never notified of a new sale date, so she filed the bankruptcy as a precaution. The second bankruptcy proved to be equally as fruitless, as now Cendant had added the PMI insurance to the loan which they forgot to add in as part of the HUD-1 calculations.

On September 18, 2000, utilizing the fraudulently recorded substitution of trustee, Attorney's Equity held a trustee sale of plaintiff's property and divested plaintiff of all property rights by way of the fraudulently held trustee sale. Cendant Mortgage sent a real estate agent out to serve a 30 day notice in late September or early October 2000. Plaintiff, Hollis-Arrington filed case number 00-CV-11125 in the U.S. District court in October 2000 to try and force Cendant to honor the verbal forbearance agreement they had entered into with Plaintiff.

Between January 2000 and July 2002, plaintiff(s) were unaware of the fraudulent trustee transfer, and believed in good faith that this was errors which were not tainted by fraud.

These fraudulently recorded documents and the fraudulently conducted trustee sale form the basis of all the cases filed in the U.S. bankruptcy court, the U.S. District Court, the U.S. courts of appeals, the U.S. Supreme Court and the removal of case number 02-CV-6568 CBM. Attorney Hankins used a wide network of attorney's, to perpetrate fraud upon the court in each of these cases. Even after Cendant repurchase the loan from Fannie Mae, they did not restart the

foreclosure process which was mandated by California's statutory foreclosure scheme. Each and every one of the attorney's simply continued to rely on the same fraudulently conducted trustee sale.

In addition plaintiff was forced to live with three bankruptcies on her credit file, which were filed due to the fraud perpetrated and presented to the courts by these defendants, by and through their attorney's.

THE FILING OF THESE DOCUMENTS WERE DONE WITH MAILCE AND FORETHOUGH; THEREFORE NO PRIVILEGE WILL ATTACH

Each and every document related to the foreclosure was acquired by plaintiffs from the Los Angeles county recorder's office. A non judicial foreclosure bears none of the attributes essential for absolute privilege. Though regulated by statute as a matter of public policy, nonjudicial foreclosure is a private procedure involving private parties, occurring pursuant to a private power of sale contained in a deed of trust. (*See generally 4 Miller & Star, supra*§§ 10:179 to 10:180, pp. 547-551.) By definition it does not occur in a judicial proceeding. Hence, on its face it is not covered by the litigation privilege. It also does not occur in an "official proceeding authorized by law" (§ 47, subd. (b)(3)) a category generally reserved for "official, 'i.e. governmental proceedings: that is proceedings involving the government, an agency of official thereof, or quasi-judicial proceeding otherwise reviewable by writ of mandate. (*Eisenberg v. Alameda Newspaper, Inc.* (1999) 74 Cal.App.4th 1359, 1377 [88

cal. Rptr. 2d 802]; see also [***37] (*Garretson, supra,* 156 Cal.App.4th at pp. 1520-1521[non judicial foreclosure is not an official proceeding within the meaning of Code Civ. Proc., § 425.16, subd. (e)(1) and (2)].) [*340]

FRAUD UPON THE COURT

The Ninth Circuit has applied Professor Moore's definition of fraud on the court:

> Fraud Upon the court should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication

An attorney's conduct can be construed as fraud upon the court. The Ninth circuit has concluded that Fraud upon the court includes both attempts to subvert the integrity of the court and fraud by an officer of the court. "*Intermagnetics, 926 F. 2d at 916.*

Plaintiffs alleges that attorney Hankins, attorney Shelton, attorney Gilligan, and the attorney for the interveners, were aware that Cendant Mortgage had deliberately devised a scheme, by using fraud, to thwart the statutory scheme, of California's foreclosure procedure as defined in C.C.P. section 2724, and illegally foreclose on Plaintiff's home. After the fraudulent scheme was interrupted by this Plaintiff's filing

of case 00-CV-11125CBM, defendant Cendant Mortgage hired attorney, Suzanne Hankins and briefed her on how to the fraudulent scheme in court. Attorney Hankins then worked with all of the attorneys who made appearances in all three cases, to present this scheme to this court. Their scheme was deliberately designed to subvert the integrity of the court and defile judicial process.

THE FRADULENT SCHEME BY CENDANT, FANNIE MAE, ET. AL. AND PRESENTED TO THE COURT BY ATTORNEY'S; HANKINS, ET.AL

It has been well established in the numerous cases filed by this Plaintiff(s) and is now an undisputed fact that; the loan which formed the basis of the dispute in this case, was made in October 1999 and, sold Fannie Mae on the secondary market in November of 1999 (30 days thereafter). Plaintiff contacted Cendant Mortgage in February 2000, in an attempt to resolve the delinquency, by entering into a forbearance agreement, and adding the missed payments to the end of the loan.

"PLAINTIFF ASKS THE COURT TO KEEP IN MIND, THAT Hollis-Arrington, CAME TO THE COURT AS A LAST RESORT TO SAVE HER HOME FROM FORECLOSURE. PLAINTIFF BELIEVED IN GOOD FAITH, THAT CENDANT HAD VERBALLY AGREED TO A FORBEARENCE AGREEMENT. AND WITH THAT IN MIND THIS PLAINTIFF CAME TO THE COURT ASKING THAT THIS COURT ORDER CENDANT MORTGAGE TO ABIDE BY THE AGREEMENT, OR IN THE

ALTERNATIVE TO ALLOW THIS PLAINTIFF 60 DAYS TO REFINANCE HER HOME.

California Statutory Foreclosure Procedure As Set Forth By: Civil Code Sections 2934 & 2924

On January 18, 2000 Cendant Mortgage caused to be recorded in the Los Angeles County recorder's office a substitution of trustee. This substitution is governed by section 2934a. (a) (2), which reads in relevant part:

> *A substitution executed pursuant to subparagraph (B) of Paragraph (1) is not effective unless all the parties signing the substitution sign under the penalty of perjury, a separate written document stating the following:*
>
> *(A) The substitution has been signed pursuant to subparagraph (B) of Paragraph (1).*
>
> *(B) None of the undersigned is a licensed real estate broker of affiliate of the broker that is That is the insurer or servicer of the obligation secured by the deed of trust.*
>
> *(C) The undersigned together holds more than 50% of the record beneficial interest of a series of notes secured by the same real property or of undivided interest in a note secured by real property equivalent to a series transaction.*

Attached hereto is a copy of the documents filed in the office of the Los Angeles County recorder's office, and filed by Cendant Mortgage swearing under the penalty of perjury that "Cendant" was the beneficiary of the loan at the time of filing. This was false and fraudulent, Cendant knew it was false and fraudulent and intended that this documents be relied on to substitute the trustee. When, in fact Fannie Mae was the legal beneficiary of the loan.

On May 11, 2000 Cendant's fraudulently appointed Trustee, attempted to hold a trustee sale of the property. The fraudulently appointed trustee (Attorney's Equity) was aware that Fannie Mae was the owner of the loan, yet acted in conspiracy with Cendant Mortgage to falsify the substitution of attorney in order to hold a fraudulent trustee sale of the property.

However, believing that this was a true and properly held trustee sale, plaintiff filed bankruptcy to stop the sale. The trustee sale was postponed and in July 2000, the fraudulently appointed trustee set another trustee's sale date. This sale was postponed under the shame fraudulently executed trustee's deed as the first notice of sale. Cendant and the trustee knew the trustee's deed was fraudulent. The court and this plaintiff relied on the fraudulent trustee's deed.

On 8/23/00, with a bankruptcy in place, Cendant's fraudulently appointed trustee conducted a foreclosure sale of the property. Even after finding out about the bankruptcy stay in place, Cendant recorded

the fraudulently obtained trustee's deed. The deed divested this plaintiff of the title. This Plaintiff was totally unaware of the sale on 8-11-00, and was attempting to refinance the property. Additionally, plaintiff continued to attempt to work the mortgage delinquency out with Cendant Mortgage. Plaintiff at all times, during her attempts to work with Cendant Mortgage was unaware that the title had been divested and that there was no possibility of her refinancing the property. The trustee then filed for another sale in November 2000.

On or about October 18, 2000, plaintiff filed this case in the District Court. Plaintiff filed a request for a TRO to stop, what she believed was a properly conducted foreclosure sale. In September of 2000, Fannie Mae requested Cendant Mortgage repurchase the aforementioned loan. Apparently the loan was repurchased by Cendant Mortgage in late October or early November. However, as of the filing of this case Cendant still had not restored the title to this plaintiff, which was divested in the August 2000 sale. After the filing of this case, Andrea Jenkins agreed to allow this plaintiff 60 days to attempt to refinance her property. In this deceptive agreement, Ms. Jenkins was aware that Cendant had divested the title in August 2000, and there was no possibility of refinancing the property.

ATTORNEY HANKINS, ET. AL & THE FRAUD UPON THE COURT

Attorney Hankins, et. al. were the counsels for the defendants in this case. Fraud Upon The Court

includes both attempts to subvert the integrity of the court and fraud by an officer of the court. "*Intermagnetics, 926 F..2d at 916.* Plaintiff brings this motion as Hankins, Sittler and Wruble are officers of the court. (Courts have the inherent authority to discipline lawyers which "derive from lawyers role as an officer of the court which granted admission"); *Cord v. Smith, 338 F.2d 516, 524 (9th Cir.* 1988) (Internal quotation omitted).

Plaintiffs asserts that the aforementioned attorneys were working with each other to devise a strategy or scheme when Plaintiff(s) initially filed this case in the District Court. Attorney Hankins was the Attorney for Cendant Mortgage at all times during these procedures and was in possession of the records regarding the ownership of the loan. Attorney Hankins also was well aware that the loan had been sold on the secondary market to Fannie Mae; thirty days after Cendant approved the loan to this plaintiff. Attorney Hankins have submitted briefs to this court stating the same knowledge of the sale to Fannie Mae.

There are no transcripts for case number 02-CV-6568CBM, and therefore request the court rely on the pleadings submitted by the counsels in the case. While it is acknowledged by the plaintiff(s), that the beneficiary or owner could have called for a default and trustee sale of the property their property, California's statutory scheme is clear that Fannie Mae was required by statute to originate the default in its name, and appoint the trustee for the sale.

Attorney Hankins, et. al. was aware that their testimony to the court was deliberately meant to mislead the court, subvert the integrity of the court, and it interfere with the judicial power of the court, to issue a ruling based on facts which were true, and not false and fraudulent. Hankins, et. al. was aware of the bankruptcy filings, in this plaintiff attempt to save her home. Attorney Hankins was also aware of the fraudulent documents that Cendant Mortgage filed in May 2000, with the Los Angeles County Recorder's office, (i.e. the substitution of trustee, notice of default, and notice of sale) in order to initiate this fraudulent foreclosure. Attorney Hankins, was aware at all times, along with her fellow attorney's;, that information they were providing to the court was false and fraudulent. (because all the documents filed to initiate the foreclosure process was fraudulently executed)

Attorney Hankins et. al. were aware that Cendant Mortgage, by way of the fraudulently held trustee had recorded a trustee's deed on 9/11/2000, thereby divesting this plaintiff of title to the property. This Plaintiff was totally unaware of this trustee's sale and the divesting of title, and was totally baffled by the sudden non communications of the lender, who was willing to refinance the property.

SUMMARY OF "FRAUD UPON THE COURT" CLAIM

Plaintiff relies on the ruling of; *Hazel-Atlas Glass Co. v Hartford Empire Co.*, 322 U.S. 238, 245-

46, 250, 88 L. Ed. 1250, 64S. Ct. 997 (*1944* (deliberately [**10] planned scheme to present fraudulent evidence constitutes ("Fraud Upon The Court") *overruled on other grounds, Standard Oil Co. of Cal v. United States, 429 U.S. 17, 50 L. Ed. 2d 21, 97 S. Ct. 31 (1976; (Abatti, 859 F. 2d at 118 (Fraud Upon the Court involves unconscionable plan or scheme to improperly influence the court*).

Plaintiff came to this court in a desperate attempt to save her home. She had a "good faith belief "that the true facts would be presented to the court on both sides and that the court would make a fair an impartial determination based on those truths. Instead, the attorneys in this matter intentionally presented false and fraudulent testimony and facts to the court about the state of the default and trustee sale. (based on Calif. Code section 2934a) the fraud committed by Cendant in appointing Attorneys Equity as trustee would have invalidate the entire foreclosure process and caused Cendant to start the process anew, after they had repurchased the loan from Fannie Mae, then appointed a new trustee. Plaintiff was forced into bankruptcy on three occasions based on fraudulent foreclosure documents executed by Cendant and Attorneys Equity. That fraud was then presented to this court as the truth, resulting in an adverse ruling.

This Plaintiff would not have had the need to come to this court if the fraudulent foreclosure had not occurred and she had not been divested of title. Plaintiff had a lender who was willing to make a hard money loan to refinance the property. The documents

are attached hereto as to the fraudulently procured trustee sale.

Submitted,

Date: June 9, 2010 BY: _____

/s/ Beverly Ann Hollis-Arrington

BY: _____

/s/ Crystal M. Lightfoot

[FILED DEC 15, 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CRYSTAL MONIQUE LIGHTFOOT,

Plaintiff,

and,

BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiff - Appellant,

v.

CENDANT MORTGAGE CORPORATION; et al.,

Defendants - Appellees,

No. 03-56580

D.C. No CV-02-06568-CBM

MEMORANDUM*

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, Chief Judge, Presiding

Submitted on December 8, 2003**

Before: WALLACE, GOULD and CALLAHAN, Circuit Judges

03-56580

The court has received and reviewed the response to this court's order to show cause.

A review of the record and appellant's response indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

Accordingly, we summarily affirm the district court's orders.

All pending motions, including the emergency motion filed on September 11, 2003, are denied as moot.

AFFIRMED.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

[FILED JAN 9, 2012
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CRYSTAL MONIQUE LIGHTFOOT; BEVERLY ANN HOLLIS-ARRINGTON,	No. 10-56068 D.C. No. 2:02-cv-06568-CBM-AJW
Plaintiffs - Appellants,	MEMORANDUM*
v.	
CENDANT MORTGAGE CORPORATION, doing business as PHH Mortgage; et al.,	
Defendants - Appellees.	

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington appeal pro se from the district court's judgment dismissing their action arising out of foreclosure proceedings as barred by the doctrine of *res judicata*, and from the order denying their motion to set aside the judgment. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a district court's denial of a Fed. R. Civ. P. 60(b) motion. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004). We review *de novo* a district court's determination regarding removal jurisdiction. *Providence Health Plan v. McDowell*, 385 F.3d 1168, 1171 (9th Cir. 2004). We may affirm on any ground supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008). We affirm.

The district court did not abuse its discretion by denying plaintiffs' Rule 60(b) motion to set aside the judgment because plaintiffs failed to establish any ground for relief. *See Casey*, 362 F.3d at 1260 (discussing requirements of Rule 60(b)(3), including that the alleged fraud "not be discoverable by due diligence before or during the proceedings" (citation an internal

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

quotation marks omitted)); *see also Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1104 (9th Cir. 2006) (while "'fraud on the court' can sometimes constitute extraordinary circumstances meriting relief under Rule 60(b)(6)," such relief is construed narrowly).

The district court had removal jurisdiction because state claims filed to circumvent the *res judicata* impact of a federal judgment may be removed to federal court. *See Ultramar Am. Ltd. v. Dwelle*, 900 F.2d 1412, 1417 (9th Cir. 1990)

> When a litigant has suffered a final defeat on a federal claim yet thereafter files a similar-although-not-preempted state claim in state court, the sequence of events gives rise to an inference that the litigant is not interested in the state cause of action per se, but is instead attempting to circumvent the effects of the federal question judgment. In this limited instance, removal is allowed.

Plaintiffs' remaining contentions are unpersuasive.

Plaintiffs' motion for a preliminary injunction is denied. Plaintiffs' request for judicial notice is granted.

AFFIRMED.

[FILED APR 13 2012
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CRYSTAL MONIQUE LIGHTFOOT; BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiffs - Appellants,

v.

CENDANT MORTGAGE CORPORATION, doing business as PHH Mortgage; et al.,

Defendants - Appellees.

No. 10-56068

D.C. No. 2:02-cv-06568-CBM-AJW
Central District of California, Los Angeles

ORDER

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

We hereby sua sponte withdraw the memorandum disposition filed on January 9, 2012.

Appellants' petition for panel rehearing and petition for rehearing en banc are denied as moot.

Upon review of the record and the briefing, this court has determined that the appointment of pro bono counsel in this appeal would benefit the court's review. The court by this order expresses no opinion as to the merits of this appeal. The Clerk shall enter an order appointing pro bono counsel to represent appellants for purposes of this appeal only.

Pro bono counsel shall consult with appellants to determine whether: (1) replacement briefing; or (2) supplemental briefing and appellants' previously filed briefs will be submitted to the judges deciding this appeal. The court encourages the submission of replacement briefing rather than supplemental briefing. Appellees shall also file a replacement or supplemental brief, or shall notify the court in writing that appellees stand on the previously filed answering brief. Both parties shall state on the cover pages of the briefs whether they are replacement briefs or supplemental briefs.

The parties may file replacement excerpts or supplemental excerpts. If replacement excerpts are filed, the previously tendered excerpts will be

stricken. The absence of replacement excerpts will be treated as a joinder in the previously submitted excerpts.

In addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of the Federal National Mortgage Association ("Fannie Mae"), 12 U.S.C. § 1723a(a).

Pro bono counsel shall appear at oral argument. The Clerk shall establish a supplemental/ replacement briefing schedule. The appeal is stayed pending further order of this court.

If appellants object to the court's appointment of counsel in this appeal, appellants shall file a written objection within 14 days after the date of this order.

JA 119

Case No. 10-56068

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BEVERLY HOLLIS-ARRINGTON & CRYSTAL LIGHTFOOT,

Plaintiffs-Appellants,

v.

CENDANT MORTGAGE CORPORATION et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Central District of California
Case No. 02-6568

DEFENDANT-APPELLEE FANNIE MAE'S RESPONSE BRIEF

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Attorneys for Defendant-Appellee Fannie Mae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, defendant Federal National Mortgage Association states that it is a publicly traded corporation chartered by the U.S. Congress. It is under the conservatorship of the Federal Housing Finance Agency pursuant to 12 U.S.C. § 4617(a)(1)-(2). It has no parent company, subsidiary, or affiliate which has outstanding securities in the hands of the public, and no publicly held corporation owns in excess of ten percent of its outstanding stock.

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INTRODUCTION

This appeal arises from the third of five different lawsuits filed in federal and state courts around the country, all involving the same core set of facts and raising essentially the same allegations. In August 1999, plaintiff Beverly Hollis-Arrington took out a loan from Cendant Mortgage Corporation ("Cendant") secured by a deed of trust on property she owned in West Hills, California. The loan was subsequently sold to Federal National Mortgage Association ("Fannie Mae"). Hollis-Arrington missed her first payment on the loan in October 1999, and subsequently failed to make any payments at all. The property was eventually foreclosed and re-sold. In a series of lawsuits, Hollis-Arrington has alleged that this foreclosure was improper, either because Cendant, which remained the servicer on the loan, breached its agreement to grant her a forbearance or because the loan itself was part of an illegal conspiracy to encourage non-creditworthy African-Americans to take out loans that they would not be able to repay. All of Hollis-Arrington's other lawsuits have been dismissed. This one should be too.

Hollis-Arrington (along with her daughter) filed this action against Cendant, Fannie Mae, and Attorneys Equity (the trustee for the property) in California state court after a complaint raising essentially the same allegations was dismissed in California federal district court. Defendants removed to federal court, which dismissed the complaint on res judicata grounds and denied plaintiffs' Rule 60(b)

motion to set aside the judgment. This Court affirmed the district court's decisions in late 2003. Because the complaint was not dismissed as to Attorneys Equity, however, the case technically remained open, and in 2010, plaintiffs filed yet another Rule 60(b) motion and a new appeal to this Court. This Court initially affirmed, but then vacated its order, appointed counsel for plaintiffs, and directed that the parties file new briefs that, in addition to any other issues, addressed whether the case was properly removed to federal court.

Removal to federal court was plainly proper because Fannie Mae's federal charter provides that it can "sue or be sued ... in any court of competent jurisdiction, State or Federal." As the U.S. Supreme Court held in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), "sue or be sued" provisions that expressly mention the federal courts establish independent federal subject matter jurisdiction. That rule applies to cases involving Fannie Mae, as the D.C. Circuit held in *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust v. Raines*, 534 F.3d 779 (D.C. Cir. 2008).

Plaintiffs' contrary argument is that the district court was not a "court of competent jurisdiction" as to their action against Fannie Mae, and thus the charter's "sue or be sued" provision did not confer federal jurisdiction over the action. In fact, the Supreme Court has previously held that statutory provisions authorizing suit in "any Federal or State court *of competent jurisdiction*" suffice, without more, to authorize suit in federal district courts, and the phrase "of competent jurisdiction" in the Fannie Mae charter serves

multiple functions that have nothing to do with restricting the scope of federal jurisdiction over suits by and against Fannie Mae.

Having properly assumed jurisdiction, the district court also properly dismissed plaintiffs' claims on res judicata grounds because Hollis-Arrington had previously brought essentially the same suit, and that suit was dismissed on the merits. Indeed, this Court affirmed the district court's previous dismissal on res judicata grounds. The district court also properly exercised its discretion when it denied plaintiffs' Rule 60(b) motion to set aside the judgment. As an initial matter, plaintiffs' motion was untimely because they waited over *seven years* to file it. It also fails on the merits because all of the "newly discovered evidence" they cite was, in fact, not newly discovered at all—it was available and cited in the Rule 60(b) motion they previously filed in 2004—and it would not have changed the outcome in the case in any event.

The decisions of the district court should be affirmed.

JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction pursuant to 12 U.S.C. § 1723a(a), which provides that Fannie Mae may be "sued ... in any court of competent jurisdiction, State or Federal."

This Court has jurisdiction under 28 U.S.C. § 1291 because the appeal is from a final judgment entered by the district court on June 11, 2010. Plaintiffs filed their notice of appeal on July 6, 2010.

STATEMENT OF THE ISSUES PRESENTED

1. Whether removal is proper where the defendant's federal charter authorizes it to "sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal."

2. Whether this Court's prior order summarily affirming the district court's motion to dismiss and its denial of plaintiffs' Rule 60(b) motion is "law of the case."

3. Whether the district court properly dismissed plaintiffs' complaint on res judicata grounds, where one of the plaintiffs previously filed a suit raising the same claims against almost the exact same parties and it was dismissed on the merits.

4. Whether the district court properly exercised its discretion in denying plaintiffs' Rule 60(b) motion, where plaintiffs waited roughly seven years after their case was dismissed to file their motion and did not offer newly discovered evidence that was likely to have changed the outcome.

STATEMENT OF THE CASE

Plaintiff Beverly Hollis-Arrington was the owner of real property that was foreclosed upon and subsequently re-sold after she failed to make required loan payments. She has filed a number of suits in both federal and state court related to the foreclosure of the property. In this case, she and her daughter (to whom she at one point deeded her home) allege, among other things, that defendants conspired to make loans to

non-creditworthy African-Americans to induce default and allow Fannie Mae to foreclose on the property. Plaintiffs seek damages and declaratory relief.

A. Background on Fannie Mae

Originally established in 1938 in response to the Great Depression, Fannie Mae was created to fulfill an "important public mission," 12 U.S.C. § 4501(1), *viz.*, promoting a vibrant secondary mortgage market and making home ownership more accessible for low and middle-income Americans. National Housing Act Amendments of 1938, Pub. L. No. 75-424, 52 Stat. 8, 23 (1938); 12 U.S.C. §§ 1716-1719; *see* S. Rep. No. 102-282, at 9 (1992) (stating that Fannie Mae was "legislatively chartered for public purposes"). Because this mission was a critical component of federal housing policy, Fannie Mae was constituted as a governmental entity and organized under federal law. 12 U.S.C. § 1716. Its original charter provided that it could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934).

In 1954, with the enactment of the Housing Act of 1954, Fannie Mae was converted to a "mixed-ownership corporation," and the "sue-and-be-sued" provision in its charter was amended to provide that it could "sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal." Housing Act of 1954, Pub. L. No. 83-560, §

309(a), tit. II, 68 Stat. 590, 621-22 (1954). Notwithstanding these changes to its structure (and others that followed[1]), its fundamental purpose remained the same: to effectuate federal housing policy by making home ownership more accessible to low and middle-income Americans. *See* S. Rep. No. 102-282, at 25 (noting "the Congressional design in chartering the enterprises as privately owned and managed entities with special, public purposes"); *id.* at 34 (recognizing Fannie Mae's "special relationship with the federal government"); Corporate Governance, 70 Fed. Reg. 17,303, 17,309 (Apr. 6, 2005) (acknowledging Fannie Mae's "unique mission").

Because Fannie Mae is tasked with effectuating federal policies and achieving federal goals, Congress has ensured that Fannie Mae's structure and operations remain subject to federal oversight. When this case was removed to federal court, Fannie Mae was required, among other things, to submit annual reports to both houses of Congress and various federal agencies and offices. 12 U.S.C. § 1723a(d)(3)(A), 1723a(j), 1723a(m)(n). Fannie Mae was also required to meet annual housing goals established by the U.S. Secretary for Housing and Urban Development. *See* 12 U.S.C. §§ 4562-64. And Fannie

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[1] In 1968, Fannie Mae was established as a private shareholder owned corporation, Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 802(z)-(ee), 82 Stat. 476, 541 (1968), although it remained heavily regulated by the federal government, *see, e.g.*, Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941 (establishing the OFHEO as Fannie Mae's primary regulator).

Mae's prior regulator, the Office of Federal Housing Enterprise Oversight ("OFHEO"), enacted numerous federal regulations pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941, covering a number of topics from executive compensation to Fannie Mae's capitalization, *see* 12 C.F.R. § 1770.1 (executive compensation); *id.* § 1777.1 (capitalization). Congress expanded the federal government's oversight of Fannie Mae when it passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654 (2008), which among other things, established the Federal Housing Finance Agency ("FHFA") as Fannie Mae's regulator and provided FHFA's Director with the authority to place Fannie Mae into conservatorship or receivership. 122 Stat. at 2662, 2734. FHFA's Director exercised that authority on September 6, 2008 and placed Fannie Mae into conservatorship. Since then, FHFA has enacted a number of regulations similar to those that were in place prior to the conservatorship. For example, Fannie Mae is still required to meet annual housing goals established by its conservator, FHFA. *See* 2012-2014 Enterprise Housing Goals, 77 Fed. Reg. 67,535 (2012). And FHFA is still required to submit annual reports to Congress regarding various aspects of Fannie Mae's business and performance. *See* 122 Stat. at 2745.

B. Factual Background

In August 1999, Cendant Mortgage Corporation ("Cendant") lent Hollis-Arrington $180,400 secured by a deed of trust on property she owned in

West Hills, California. Compl. ¶ 9.[2] Roughly a month later, Cendant sold the loan to Fannie Mae, although it remained the loan's servicer. *Id.* ¶ 10. Fannie Mae subsequently re-sold the loan to Cendant because it failed to meet Fannie Mae's credit standards.

In October 1999, the first monthly payment on the loan was due. Hollis-Arrington failed to make that payment, or any subsequent payment. *Id.* ¶ 12. She asked Cendant for, and was provided, information about programs to cure the default. Hollis-Arrington sought to enter into a forbearance agreement, and alleges that Cendant led her to believe that a forbearance agreement had been approved. *Id.* ¶ 15. Cendant ultimately rejected the application and initiated foreclosure proceedings.

In May 2000, to prevent foreclosure, Hollis-Arrington filed a bankruptcy petition. That petition was dismissed the next month for failure to pay the required filing fees. *See* DE 31-33, No. 00-bk-14478-GM (Bankr. C.D. Cal. 2000). In July 2000, she filed a second bankruptcy petition, which was again dismissed for failing to pay the required filing fees. This time, the court's dismissal order barred Hollis-Arrington from filing another bankruptcy petition for 180 days. *See* DE 27, 28, No. 00-bk-16423-GM (Bankr. C.D. Cal.).

On September 11, 2000, Hollis-Arrington deeded her home to her daughter, Crystal Lightfoot.

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[2] All citations to "Compl." or "DE" (without a corresponding case number) refer to the underlying action giving rise to this appeal.

See Compl. Ex. E, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Lightfoot filed her own bankruptcy petition. This petition too was dismissed for failure to make the required payments, and the court barred Lightfoot from filing another bankruptcy petition for 180 days. DE 28, 29, No. 00-bk-18360-AG (Bankr. C.D. Cal. 2000).

Cendant scheduled a new foreclosure sale on November 28, 2000, but continued the sale to January 11, 2001, based on Hollis-Arrington's assurance that she was trying to refinance. Although no refinancing ever occurred, the foreclosure was further delayed by court order in the first lawsuit Hollis-Arrington filed in federal district court in October 2000. *See* DE 25, No. 00-cv-11125-CBM-AJW (C.D. Cal. Jan. 10, 2001); *see also infra* at 10-11. On February 5, 2001, four days after the district court lifted the temporary stay it had granted (DE 44, No. 00-cv-11125-CBM-AJW (C.D. Cal. Feb. 1, 2001), Lightfoot filed a second bankruptcy case, which was dismissed the next month. Lightfoot was again barred from making a new bankruptcy filing for 180 days. DE 30, 31, No. 01-bk-10910-AG (Bankr. C.D. Cal. 2001).

Lightfoot then transferred 50% of the property back to Hollis-Arrington (Compl. ¶ 102, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003)), who filed her third bankruptcy petition on March 22, 2001. Cendant at that point obtained "in rem" relief from the automatic stay in order to proceed with foreclosure, which was scheduled for June 29, 2001. DE 33, No. 01-12579-GM (Bankr. C.D. Cal.). Despite Hollis-Arrington's attempt to seek a stay in her second suit in

federal district court, the foreclosure sale was finally held that day. Compl. ¶¶ 61-72, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Harold Tennen and Ed Feldman bought the property at the sale and, through state court action, evicted Hollis-Arrington in September 2001. *Id.* ¶¶ 80-81. They subsequently sold the property to Robert O. Matthews. Compl. ¶ 5.

C. Related Actions

This appeal arises from the third of at least five suits filed by plaintiffs in connection with the foreclosure of the property. In the first suit, which Hollis-Arrington filed against Cendant in the Central District of California on October 18, 2000, she alleged that Cendant had "fraudulently promised to provide her with a forbearance agreement after she fell delinquent but reneged and foreclosed on the property instead." *Hollis-Arrington v. PHH Mortg. Corp.*, 2005 WL 3077853, at *2 (D.N.J. Nov. 15, 2005). The district court granted Cendant's motion for summary judgment, DE 102, No. 00-cv-11125-CBM-AJW (C.D. Cal. July 15, 2002), and this Court affirmed, *Hollis-Arrington v. Cendant Mortg. Corp.*, 61 F. App'x 462 (9th Cir. 2003) (mem).

In June 2001, while the first case was pending, Hollis-Arrington filed a second action against Cendant, Fannie Mae, and Attorneys Equity National Corporation. This time, her theory was that "Cendant, in a conspiracy with Fannie Mae, sought to make mortgage loans to non-creditworthy black borrowers for the sole purpose of causing the borrowers to default on the loans and enabling Fannie Mae to

foreclose and acquire the real property." DE 162, at 3, No. 01-cv-05658 (C.D. Cal. Aug. 29, 2003). In May 2002, the district court dismissed the case, DE 131, at 7, No. 01-cv-05658 (C.D. Cal. May 28, 2002), and this Court affirmed. *PHH Mortg. Corp.*, 2005 WL 3077853, at *2; *see* DE 28, No. 02-56280 (9th Cir. Apr. 17, 2003).

After the district court dismissed Hollis-Arrington's complaint in the second suit, she (along with her daughter, Crystal Lightfoot) filed this case in Los Angeles Superior Court on July 18, 2002. They sued the same parties as in the second action and made the same allegations of a conspiracy to make loans to non-creditworthy borrowers. *Id.* at 3; *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The district court granted motions by Cendant and Fannie Mae to dismiss on res judicata grounds, and this Court affirmed. *See infra* at 12-16 (detailing the full procedural history of this litigation).

Hollis-Arrington subsequently filed a fourth action in federal court in the District of Columbia. *Hollis-Arrington v. PHH Mortg. Corp.*, 205 F. App'x 48, 50 (3d Cir. 2006) (per curiam) (discussing No. 03-cv-02416-TPJ (D.D.C. 2003)). The district court granted defendants' motion to dismiss on res judicata grounds, DE 41, No. 03-cv-02416-TPJ (D.D.C. Feb. 17, 2004), and the D.C. Circuit Court of Appeals affirmed, Order, *Hollis-Arrington v. Fannie Mae*, No. 04-5068, at 2 (D.C. Cir. Nov. 15, 2004).

Finally, plaintiffs filed a fifth suit in federal court in New Jersey. *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The defendants moved to dismiss on a

variety of grounds, including res judicata, and the district court granted the motion. *Id.* at *5-12. The Third Circuit Court of Appeals affirmed. *PHH Mortg. Corp.*, 205 F. App'x at 55; *see id.* at 52 ("res judicata bars suit against ... Fannie Mae").

D. Proceedings Below

As noted above, plaintiffs filed this case in Los Angeles Superior Court after the similar complaint Hollis-Arrington had previously filed in federal district court was dismissed. On August 22, 2002, Fannie Mae removed the case to federal district court. On August 26, 2002, plaintiffs filed an application to remand, which was denied on September 5, 2002.

In late August, while the remand briefing was ongoing, defendants Fannie Mae, Cendant, and Matthews filed motions to dismiss. On February 20, 2003, the district court granted Cendant's and Fannie Mae's motion to dismiss, concluding that all three elements of res judicata were satisfied. First, "[p]laintiffs have already prosecuted two prior actions concerning the same loan process and eventual foreclosure of their property....Thus, the same rights and interests are at issue in the instant case as were adjudicated in the previous actions." OER 1:33 (DE 59, at 8).[3] Second,

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[3] Citations to "OER" refer to the Excerpts of Record filed with plaintiffs' original brief. Because the Excerpts of Record are not consecutively paginated, the cited page number refers to the page in the PDF version of the Excerpts of Record. Thus, the citation "OER 1:33" refers to page 33 of the PDF of the first volume of the Excerpts of Record. The citation to the relevant docket entry is included in parentheses, as well.

"the requirement that the earlier actions result in a final judgment on the merits is met" because "[u]nder federal law, final judgments have preclusive effect under res judicata regardless of the pendency of appeal." *Id.* at 34 (DE 59, at 9). Third, the parties were so similar that their interests were adequately represented in the original suit. *Id.* at 34-35 (DE 59, at 10). The court also granted defendants' motion on the alternative ground that plaintiffs' claims were barred by collateral estoppel.

On June 4, 2003, plaintiffs filed a motion to set aside the judgment as to all defendants other than Attorneys Equity, and on August 29, 2003, the district court denied the motion. *Id.* at 46 (DE 79, at 1). Although judgment had not been entered against Attorneys Equity, plaintiffs filed a notice of appeal, and on December 15, 2003, this Court summarily affirmed. SER-7-8;[4] *see* OER 1:56 (DE 89). This case was removed from the district court's active docket and remained dormant until late 2008.

On April 7, 2009, plaintiffs filed a motion in the district court to restore this case to the court's active calendar for the purpose of entering final judgment pursuant to Federal Rule of Civil Procedure 54(b). On October 21, 2009, the district court entered judgment in favor of Cendant, Fannie Mae, and Matthews, "consistent with" its prior order granting the defendants' motions to dismiss. On May 27, 2010, the district court ordered plaintiffs to show cause no later than

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[4] Citations to "SER" refer to the Supplemental Excerpts of Record.

June 10, 2010 why the action should not be dismissed with prejudice as to Attorneys Equity based on the doctrine of res judicata. On June 11, 2010, the court sua sponte dismissed the claim against Attorneys Equity on res judicata grounds, and entered judgment in favor of Attorneys Equity. Plaintiffs ultimately filed a reply to the court's show cause order later that day.

That same day, plaintiffs moved to set aside the judgment pursuant to Rule 60(b). On September 27, 2010, the district court denied plaintiffs' motion to set aside the judgment. The district court first held that it lacked jurisdiction over the motion because plaintiffs failed to file it within a year after entry of judgment. The court held that "[a]lthough [it] did not initially enter a judgment on a separate document as required by Federal Rule of Civil Procedure 58(a), Plaintiffs demonstrated their belief that the February 20, 2003 order was a final judgment." OER 1:93 (DE 117, at 7). "Because the parties treated the order of dismissal as a judgment, the Court finds that, for purposes of Rule 60(b)(3), judgment was entered as to these defendants on July 21, 2003, which was 150 days from the date of entry of the February 20, 2003 order of dismissal." *Id.*

The court also rejected plaintiffs' motion on the merits, explaining that "[p]laintiffs have failed to present clear and convincing evidence that Defendants' attorneys perpetrated fraud upon the Court, that the judgment was unfairly procured, or that the evidence was not previously available to Plaintiffs. Indeed, the evidence was clearly discoverable prior to the filing of

the Rule 60(b) Motion because the documents are public records and Plaintiffs presented the same facts to the Court more than seven years ago." *Id.* at 94 (DE 117, at 8). The court also rejected plaintiffs' request for "'an independent action for the court to set aside the judgment for "fraud upon the court."'" *Id.* at 95 (DE 117, at 9). Construing the request as one for relief under Rule 60(b)(6), the court held that there was "no basis for this extraordinary relief." *Id.* On September 30, 2010, this Court lifted the stay on the appeal.

Following briefing, this Court issued a memorandum, holding that "[t]he district court did not abuse its discretion by denying plaintiffs' Rule 60(b) motion to set aside the judgment because plaintiffs failed to establish any ground for relief." DE 30, at 2, No. 10-56068 (9th Cir. Jan. 9, 2012). This Court also held that "[t]he district court had removal jurisdiction because state claims filed to circumvent the res judicata impact of a federal judgment may be removed to federal court." *Id.*

On January 20, 2012, plaintiffs petitioned for panel rehearing and rehearing en banc. On April 13, 2012, this Court sua sponte withdrew the memorandum disposition filed on January 9, 2012 and denied as moot plaintiffs' petition for rehearing and rehearing en banc. The Court appointed pro bono counsel for plaintiffs and directed pro bono counsel to file either replacement or supplemental briefing; the Court also provided that defendants could file replacement or supplemental briefs. The Court directed that "[i]n addition to any other issues the parties address in their briefs, they shall address whether the district court

had subject matter jurisdiction on the basis of the federal charter of [Fannie Mae]." DE 32, at 2, No. 10-56068 (9th Cir. Apr. 13, 2012).

SUMMARY OF ARGUMENT

I. The district court properly held that the "sue and be sued" provision in Fannie Mae's charter confers federal subject matter jurisdiction. In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), the Supreme Court held that where a "sue and be sued" provision in a federal charter explicitly mentions federal courts, that provision establishes independent subject matter jurisdiction in the federal courts. That rule plainly applies here. The only difference between Fannie Mae's charter and the one at issue in *American National Red Cross* is that Fannie Mae's charter authorizes suit in "any court of *competent jurisdiction*, state or federal." That is a distinction without a difference. The Supreme Court has held that similar statutory provisions authorize suit in federal district courts, and that phrase in Fannie Mae's charter serves multiple functions having nothing to do with the scope of federal jurisdiction over suits by and against Fannie Mae, as the history of Fannie Mae's charter confirms.

II. This Court should affirm because its prior order summarily affirming the district court's decisions in this case is "law of the case." This Court's prior order necessarily held that the district court properly dismissed plaintiffs' claims on res judicata grounds, and none of the "new" evidence plaintiffs offered in their Rule 60(b) motion merited a change in

result. Those are the precise questions at issue in this appeal.

III. The district court properly held that plaintiffs' claims were barred on res judicata grounds because all three criteria are satisfied here: (1) identity of claims, (2) final judgment on the merits, and (3) identity or privity between the parties. Hollis-Arrington previously brought these same claims in a prior action, which was dismissed on the merits. And the only new party is Hollis-Arrington's daughter, who temporarily owned the property at issue and has precisely the same interests in the litigation as her mother.

IV. The district court did not abuse its discretion in denying plaintiffs' Rule 60(b) motion. To start, plaintiffs' request was untimely. A Rule 60(b) motion must be brought within a "reasonable time," and plaintiffs waited seven years to bring their motion. It was also without merit because the evidence they offered was not new and, in any event, would not have changed the outcome in this case.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's denial of a motion to remand for lack of removal jurisdiction. *See Infuturia Global Ltd. v. Sequus Pharm., Inc.*, 631 F.3d 1133, 1137 (9th Cir. 2011). This Court also reviews *de novo* the district court's dismissal based on res judicata. *See Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002).

This Court reviews for abuse of discretion a district court's denial of a Rule 60(b) motion. *See SEC v. Worthen*, 98 F.3d 480, 482 (9th Cir. 1996). This Court "may not reverse a district court's exercise of its discretion unless [it has] a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon weighing the relevant factors." *SEC v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001). "A district court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." *Id.*

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD THAT THE "SUE AND BE SUED" PROVISION IN FANNIE MAE'S CHARTER CONFERS FEDERAL SUBJECT MATTER JURISDICTION

A. The Supreme Court's Decision In *American National Red Cross* Requires Federal Jurisdiction In This Case

1. In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), the Supreme Court recognized the long-standing rule that governs this case: where a "sue and be sued" provision in a federal charter explicitly mentions federal courts, that provision establishes independent subject matter jurisdiction in the federal courts. Applying that rule, the D.C. Circuit Court of Appeals held that the exact charter provision at issue here—the provision authorizing Fannie Mae

"to sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal"—confers federal subject matter jurisdiction, thus making removal appropriate. *Pirelli*, 534 F.3d at 784. The same result should follow here.

American National Red Cross involved a provision in the American Red Cross's charter authorizing it "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." 505 U.S. at 248 (quotations and citation omitted). The question was whether that provision "confer[red] original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending." *Id.* The Supreme Court noted that it did "not face a clean slate" in considering the question. *Id.* at 252. Rather, since the Republic's early days, the Court had on "several occasions ... consider[ed] whether the 'sue and be sued' provision of a particular federal corporate charter conferred original federal jurisdiction over cases to which that corporation was a party." *Id.* And the critical question in those early cases, the Court emphasized, was whether the "sue and be sued" provision specifically mentioned the federal courts; where it did, the Court held that the provision conferred federal subject matter jurisdiction. *Id.*

The first case in this line was *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), which held that a provision authorizing the first Bank of the

United States "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any place whatsoever" did *not* confer independent federal court jurisdiction. This generally stated power to sue and be sued, the Court explained, "is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court." *Id.* at 85-86. By way of contrast, the Court pointed to a different provision, which subjected the president and directors in their individual capacity to suit and "expressly authorize[d] the bringing of that action *in the federal or state courts*." *Id.* at 86 (emphasis added). That difference reflected Congress's intention that a generic right to sue "does not imply a right to sue in the courts of the union, unless it be expressed." *Id.*

In *Osborn v. President, Directors & Co. of Bank*, 22 U.S. (9 Wheat.) 738 (1824), the Court highlighted the same distinction in considering the charter of the second Bank of the United States. The second Bank was authorized to "sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all State Courts having competent jurisdiction, *and in any Circuit Court of the United States*." *Id.* at 817 (emphasis added). By its reference to suit "'in every Circuit Court of the United States,'" the provision "confer[red] jurisdiction on the Circuit Courts of the United States." *Id.* at 818. Reiterating the contrast drawn in *Deveaux*, the Court observed that the first Bank's charter provision, which merely created "a general capacity in the Bank to sue, without mentioning the Courts of the Union," did not suffice to "give a right to sue in those Courts." *Id.*

Deveaux and *Osborn* together establish "the basic rule" that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it *specifically mentions the federal courts*." *Am. Nat'l Red Cross*, 505 U.S. at 255 (emphasis added); *see id.* at 257 ("The rule established in these cases makes it clear that the Red Cross Charter's 'sue and be sued' provision should be read to confer jurisdiction."). Under this "basic rule," the Court explained in *American National Red Cross*, a provision that "authoriz[es] the organization to sue and be sued in federal courts" is a provision that "extends beyond a mere grant of general corporate capacity to sue," and for that reason "suffices to confer federal jurisdiction." *Id.* at 257.

2. Plaintiffs make two arguments that *American National Red Cross* does not compel the same result here. Neither has merit.

First, they argue that *American National Red Cross* merely permits, but does not mandate, that Fannie Mae be allowed to remove where the charter provision explicitly references federal courts. They point specifically to "*Red Cross*'s use of the word 'may,'" which they argue "is generally 'employed to imply permissive, optional or discretional, and not mandatory action.'" Pls. Br. 20 (quoting *Pirelli*, 534 F.3d at 796). But elsewhere in the opinion, *American National Red Cross* makes clear that express reference to the federal courts in a "sue and be sued" provision mandates that the federal entity be permitted to remove: "The rule established in these cases makes it clear that the Red Cross Charter's 'sue and

be sued provision' *should be read* to confer jurisdiction." 505 U.S. at 257 (emphasis added); *cf.* Br. for United States as Amicus Curiae Supporting Pet'rs, *Am. Nat'l Red Cross v. S.G.*, 1992 U.S. S. Ct. Briefs LEXIS 115, at *5-6 ("This Court's decisions have established *a clear rule* that congressional charters provide for original jurisdiction in the federal courts whenever they specifically grant a right to sue and be sued in federal courts." (emphasis added)). As the Court explained, it was important to respect this rule because Congress relied on it in enacting charters for federal entities like the Red Cross. *See Am. Nat'l Red Cross*, 505 U.S. at 264 ("We would be loath to repudiate such a longstanding and settled rule, on which Congress has surely been entitled to rely ...."); *see also Bankers Trust Co. v. Tex. & Pac. Ry. Co.*, 241 U.S. 295, 304 (1916) (holding that a provision authorizing the Texas and Pacific Railway Company to "sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States" did not confer federal subject matter jurisdiction because "[i]t was in the light of [the differing precedents in the first and second Bank charters] and of the resulting difference in their interpretation that Congress framed the act [chartering the railway company]").

Second, plaintiffs argue that Fannie Mae's charter provision differs meaningfully because of its reference to suit in "any court *of competent jurisdiction*." Pls. Br. 20 (emphasis added). According to plaintiffs, the phrase "of competent jurisdiction" effectively drains the explicit reference to "federal" courts of the import ascribed to such references in *Osborn*

and *American National Red Cross*, because it must be read to permit suit in federal court only if the court *otherwise* has "competent" subject-matter jurisdiction.

Plaintiffs grossly overread the phrase. The Supreme Court has previously held that statutory provisions authorizing suit in "any Federal or State court of competent jurisdiction" suffice, without more, to authorize suit in federal district courts. In *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003), for example, the Court held that an individual could sue his former employer in federal court for violations of the Fair Labor Standards Act because the statute provided that suit under the Act "'may be maintained ... in any Federal or State court of competent jurisdiction.'" *Id.* at 694; *see Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73-74 (2000). And as the D.C. Circuit explained in *Pirelli*, the phrase "of competent jurisdiction" in the Fannie Mae charter, in particular, serves multiple functions that have nothing to do with restricting the scope of federal jurisdiction over suits by and against Fannie Mae. *Pirelli*, 534 F.3d at 785.

To start, the phrase "help[s] clarify that ... litigants in state courts of limited jurisdiction must satisfy the appropriate jurisdictional requirements." *Id.* at 785; *see Osborn*, 22 U.S. at 817 (addressing statute that conferred authority on the Bank of the United States to "sue and be sued ... in all State Courts having competent jurisdiction"). It also makes clear that "litigants, whether in federal or state court, must establish that court's *personal* jurisdiction over the parties." *Pirelli*, 534 F.3d at 785 (emphasis

added). Indeed, the term "competent jurisdiction" is commonly used in law to refer to personal jurisdiction. *See, e.g.*, *Blackmar v. Guerre*, 342 U.S. 512, 516 (1952) ("If the Commission's action is reviewable under § 1009, it is reviewable only in a court of 'competent jurisdiction.' ... [I]t must follow that review must be in that district where the Commissioners can be served." (internal footnote omitted)); *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1178-79 (9th Cir. 2004) ("the question of a federal court's competence to exercise personal jurisdiction over a defendant is distinct from the question of whether venue is proper"); *SunCoke Energy Inc. v. MAN Ferrostaal Aktiengesellschaft*, 563 F.3d 211, 213 (6th Cir. 2009) ("the parties have treated the contract forum-selection clause for equitable relief—calling for adjudication in 'any court of competent jurisdiction'—to mean any court with personal jurisdiction"); *Drake v. Whaley*, 355 F. App'x 315, 317 (11th Cir. 2009) ("because it lacked personal jurisdiction over the Defendants, the District Court for the Eastern District of New York was not a competent court of jurisdiction").[5] The phrase also establishes that "litigants relying on the 'sue-and-be-sued' provision can

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[5] Plaintiffs thus err in arguing—following Judge Brown's concurrence in *Pirelli*—that "the phrase competent jurisdiction' almost always refers to subject-matter jurisdiction." Pls. Br. 12 (citing *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 316 (2006), and *United States v. Morton*, 467 U.S. 822, 828 (1984)); *see Pirelli*, 534 F.3d at 797 (Brown, J., concurring) (citing *Morton*, 467 U.S. at 828, for the proposition that "'[a]s far back as *Pennoyer v. Neff*, ..., [courts] drew a clear distinction between a court's "competence" and its jurisdiction over the parties'"). Not only is the argument contrary to the cases cited in text, it is also unsupported by the cases cited by plaintiffs. In *Wachovia Bank*,

sue in federal district courts but not necessarily in all federal courts." *Pirelli*, 534 F.3d at 785. Thus, a litigant may not appear in a federal court that otherwise imposes additional jurisdictional requirements, such as the Court of International Trade or the Court of Claims. *Cf. Am. Nat'l Red Cross*, 505 U.S. at 267 (Scalia, J., dissenting) (explaining that under the majority's view Red Cross "could appear ... as a party in a third-party action in the Court of International Trade and in an action before the United States Claims Court" because it "is clearly granted the *capacity* to sue and be sued in *all* federal courts" (internal citations omitted)). With respect to the Court of Claims, in particular, the "of competent jurisdiction" language also ensures that claims exceeding $10,000 are not *required* to be heard in the Court of Claims. *Compare S. Windsor Convalescent Home, Inc. v. Mathews*, 541 F.2d 910, 914 (2d Cir. 1976) ("Since the claim involved in this case is directed against the United States, seeks solely a money judgment, and exceeds the threshold sum of $10,000, jurisdiction lies exclusively with the Court of Claims."), with *Ferguson v. Union Nat'l Bank*, 126 F.2d 753, 756 (4th Cir. 1942) (interpreting a "sue-and-

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for example, the Court simply noted that "[s]ubject-matter jurisdiction ... concerns a court's competence to adjudicate a particular category of cases." 546 U.S. at 316. And, in *Pennoyer v. Neff*, 95 U.S. 714 (1878), the Court merely stated that "there must be a tribunal competent by its constitution ... to pass upon the subject-matter of the suit." *Id.* at 733. In fact, in *Morton*, although the Court recognized that "competent jurisdiction," "usually ... refer[s] to subject-matter jurisdiction," the Court noted that it "has also been used on occasion to refer to a court's jurisdiction over the defendant's person." 467 U.S. at 828.

be-sued" provision with the "of competent jurisdiction" language and concluding that "[i]t could hardly have been intended by Congress that suits for over $10,000 against the Administrator could be brought in any state court of general jurisdiction, but in the federal jurisdiction only in the Court of Claims"); *Portsmouth Redevelopment & Hous. Auth. v. Pierce*, 706 F.2d 471, 475 (4th Cir. 1983) (reaffirming *Ferguson*).[6]

Moreover, when the Supreme Court decided *American National Red Cross*, it was well aware that its decision would have implications for other "sue and be sued" provisions like Fannie Mae's. In its brief, the Red Cross noted that "entities besides the Red Cross will be affected by this Court's choice among the proposed modes of analysis" and cited provisions containing the "of competent jurisdiction" language. Br. for Pet'r, *Am. Nat'l Red Cross v. S.G.*, 1992 U.S. S. Ct.

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[6] Indeed, this explanation makes sense of the difference between Fannie Mae's charter and that of its sibling, Freddie Mac, which omits the "of competent jurisdiction" language. In her concurrence in *Pirelli*, Judge Brown argued that this difference supported her view that that the language was added to Fannie Mae's charter to remove federal subject matter jurisdiction. 534 F.3d at 799 (Brown, J., concurring). But concerns that claims involving Fannie Mae might otherwise have been forced into the Court of Claims explains this difference: Freddie Mac was "originally created as a private entity" and thus "Congress likely would not have been concerned that, absent the 'of competent jurisdiction' language, Freddie Mac cases could be funneled only to the Court of Claims rather than to federal district courts, which was a potential concern in 1954 when Congress revised the Fannie Mae statute for that then-governmental entity." *Id.* at 787 n.4.

Briefs LEXIS 220, at *48. Specifically, it noted that the Solicitor General had "advised [the Supreme] Court" that similar language in another federal charter conferred federal subject matter jurisdiction: 'Plainly, Section 1702 [of the National Housing Act], by authorizing suit "in any court of competent jurisdiction, State or Federal," provides a basis for district court jurisdiction ...'" *Id.*

There is, in sum, no legally meaningful distinction between the "sue or be sued" provision in *American National Red Cross* and the provision at issue here. What matters is that both make an express reference to suits in federal court. Under the longstanding rule running from *Deveaux* and *Osborn* through to *American National Red Cross* and *Pirelli*, that reference suffices to establish federal jurisdiction, and hence authorize removal.

B. The History Of Fannie Mae's Charter Makes Clear That Congress Intended To Authorize Federal Subject Matter Jurisdiction Over Claims Against Fannie Mae

The history of the Fannie Mae charter provision confirms Congress's intent, already expressed in its plain language, to create federal subject matter jurisdiction over suits by and against Fannie Mae.

Under the original 1934 statute, Fannie Mae was a governmental entity tasked with effectuating important federal policies, and Congress thus wanted to ensure it would have access to the federal courts. Toward that end, Congress provided that Fannie Mae

could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934). As discussed above, Congress at that time would have understood this language to unambiguously confer federal subject matter jurisdiction. *See supra* at 1922.

Twenty years later, with the enactment of the Housing Act of 1954, Congress revamped the original statute. Among other things, Congress added the phrase "of competent jurisdiction" to the sue-and-be-sued clause. Pub. L. No. 83-560, tit. II, 68 Stat. 590, 612-22 (1954). The theory, then, is that Congress sought by this amendment to revoke the federal court jurisdiction that previously existed. Yet there is no indication that Congress was troubled by the scope of existing jurisdiction, and there is no reason to think that it would have been. Indeed, although Fannie Mae was converted to a "mixed-ownership corporation" at that time, it continued to enjoy a special relationship with the federal government, and its fundamental objective remained to fulfill federal policy goals. More significant, even if Congress were troubled by the scope of existing jurisdiction, there is no reason Congress would have understood the language it added to have restricted that jurisdiction. To the contrary, when Congress acted in 1954, courts of appeals had recently examined "sue-and-be-sued" provisions with the exact same "of competent jurisdiction" language and concluded that they conferred federal subject matter jurisdiction. *See Seven Oaks, Inc. v. Fed. Hous. Admin.*, 171 F.2d 947, 948 (4th Cir. 1948) ("[The statute] provides not only that the agency may be sued but also in what courts suit may be instituted. The

exact language of the statute is: 'The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal.' There is no more ambiguity in the language used and no more reason to restrict its meaning than there was the meaning of the language permitting suit in any United States District Court in the Railway Labor Act." (internal citation omitted)); *Ferguson v. Union Nat'l Bank*, 126 F.2d at 756-57 ("We think there can be no question but that the court had jurisdiction of the cause. It is specifically provided that the Administrator in his official capacity may 'sue and be sued in any court of competent jurisdiction, State or Federal.'"); *see also George H. Evans & Co. v. United States*, 169 F.2d 500, 502 (3d Cir. 1948). Plaintiffs cite no court that had so much as suggested otherwise.

As the D.C. Circuit pointed out in *Pirelli*, it would have made no sense for Congress in 1954 to "negate automatic federal jurisdiction" by such an indirect device as the phrase "of competent jurisdiction." 534 F.3d at 786. "If Congress in 1954 did not want to continue to confer federal jurisdiction in Fannie Mae cases, it logically would have omitted the word 'Federal' from the statute, not attempted a bank shot by adding the words 'of competent jurisdiction.'" *Id.* Indeed, Congress did exactly that in the same year it added the "of competent jurisdiction" language to Fannie Mae's charter, deleting the word "Federal" from the "sue-and-be-sued" provision of the Federal Savings and Loan Insurance Corporation ("FSLIC") statute. Pub. L. No. 83-560, § 501(1), 68 Stat. 590, 633

(1954) (amending Pub. L. No. 73-479, § 402(c)(4), 48 Stat. 1246, 1256 (1934)). "The fact that Congress chose to keep that all-important word in the Fannie Mae statute but to delete it from the FSLIC statute is compelling evidence that Fannie Mae's 'sue-and-be-sued' provision was meant to ensure continuing federal jurisdiction in Fannie Mae cases." *Pirelli*, 534 F.3d at 787.

C. The Cases Cited By Plaintiffs Do Not Defeat Federal Jurisdiction In This Case

In the face of *American National Red Cross* and *Pirelli*, plaintiffs rely on cases addressing the "of competent jurisdiction" language in vastly different contexts. Their principal authority is *Califano v. Sanders*, 430 U.S. 99 (1977), which has no application here. In *Califano*, the Court considered whether § 10 of the APA granted the federal courts jurisdiction to consider challenges to agency action. Section 10 of the APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof," and that "[t]he form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action ... in a court of competent jurisdiction." 5 U.S.C. §§ 702, 703.

The Court in *Califano* concluded that § 10 did not confer automatic federal subject matter jurisdiction, but there are obvious differences between this case and *Califano*. First, the phrase there did *not expressly refer to federal courts*. Under the *Deveaux-Osborn-Red Cross* rule, the provision would not create federal jurisdiction. But where, as here, the language does refer to federal courts, federal jurisdiction is established.

Second, as the *Califano* Court explained, the phrase "of competent jurisdiction" in APA § 10 is used in a provision that is not about creating judicial jurisdiction at all: "[E]ven the advocates of jurisdiction under the APA acknowledge that there is no basis for concluding that Congress, in enacting § 10 of the APA, actually conceived of the Act in jurisdictional terms." *Califano*, 430 U.S. at 106. The context of the provision "suggests that this language was not intended as an independent jurisdictional foundation, since such judicial review is to proceed 'in a court specified by statute' or 'in a court of competent jurisdiction.' Both of these clauses seem to look to outside sources of jurisdictional authority." *Id.* at 106 n.6. Here, by contrast, "sue or be sued" provisions like the Fannie Mae charter provision have long been construed as creating independent federal court jurisdiction. In other words, in *Califano*, the "of competent jurisdiction" language was attached to a statutory provision that was not intended to confer jurisdiction of any kind; here, it is.

Third, *Califano* did not involve a federally-charted corporation, like Fannie Mae. As this Court

has already recognized, "[t]he Court's holding in *Red Cross* applies specifically to 'sue and be sued' provisions in charters for federally-chartered corporations." *K V. Mart Co. v. United Food & Commercial Workers Int'l Union*, 173 F.3d 1221, 1224 (9th Cir. 1999) (per curiam). "Federally-chartered corporations ... are entirely defined by federal law," *id.* at 1225, and it is thus especially important that they be able to access the federal courts.

Plaintiffs err equally in relying on *Doe v. Mann*, 415 F.3d 1038 (9th Cir. 2005). The provision in that case stated that "[a]ny Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian for whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action." 25 U.S.C. § 1914. Relying heavily on *Califano*, this Court held that "§ 1914's reference to 'any court of competent jurisdiction' *alone* does not create subject-matter jurisdiction in the federal district court." *Doe*, 415 F.3d at 1045 (emphasis added). That is precisely the point: if Fannie Mae's charter provision merely authorized suit in "any court of competent jurisdiction," that reference "alone" would not suffice to create federal subject-matter jurisdiction under the *Deveaux-Osborn-Red Cross* rule. But Fannie Mae's charter provision goes farther, specifically authorizing suit in federal courts, which does suffice under

that rule. *Doe* says nothing at all about that kind of provision.[7]

Finally, plaintiffs rely on a series of district court cases that have addressed Fannie Mae's charter and similar language in the charter of the Federal Home Loan Bank. Pls. Br. 16-18. The analysis in these cases is simply unpersuasive. *Rincon del Sol v. Lloyd's of London*, 709 F. Supp. 2d 517 (S.D. Tex. 2010), and *Knuckles v. RBMG, Inc.*, 481 F. Supp. 2d 559 (S.D. W. Va. 2007), for example, both rely principally on the argument that interpreting the "sue and be sued" provision to confer independent federal subject matter jurisdiction would render the "of competent jurisdiction" language superfluous. *Rincon*, 709 F. Supp. 2d at 524; *Knuckles*, 481 F. Supp. 2d at 563. But, as explained above, interpreting Fannie Mae's charter to confer federal subject matter jurisdiction does not render the "of competent jurisdiction" language superfluous at all. *See supra* at 24-27.

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[7] Plaintiffs also mention in passing older cases in which courts of appeals had held that 12 U.S.C. § 1702, which authorizes the Secretary of Housing & Urban Development "to sue and be sued in any court of competent jurisdiction, State or Federal," does not confer federal subject matter jurisdiction. *See* Pls. Br. 17 (citing *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Indus. Indem., Inc. v. Landrieu*, 615 F.2d 644, 647 (5th Cir. 1980)); *Bor-Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir. 1978); *Lindy v. Lynn*, 501 F.2d 1367, 1369 (3d Cir. 1974)). Those cases all pre-date *American National Red Cross*, however, and do not even acknowledge the long line of earlier Supreme Court cases holding that "sue-and-be-sued" provisions that reference federal courts generally provide federal subject-matter jurisdiction.

These courts also took the curious position that Congress's decision "to use substantially different language" in amending Fannie Mae's charter seven years after adopting the Red Cross charter indicated that Congress intended different federal jurisdictional consequences. *Rincon*, 709 F. Supp. 2d at 525. But as explained, the language Congress used in the Fannie Mae amendment was not "substantially different" in any meaningful sense; it was instead identical to provisions federal appellate courts had recently construed as conferring federal subject matter jurisdiction. *See supra* at 29-30. As noted, if Congress had actually intended to restrict the jurisdiction already conferred by Fannie Mae's original "sue and be sued" provision, the "substantially different language" to use would have been to delete the reference to "State or federal" courts, thereby easily eliminating automatic federal subject matter jurisdiction under already-existing Supreme Court precedent. Trying to achieve that result by retaining the express reference to federal courts while adding the "of competent jurisdiction" phrase would be a ridiculous "bank shot" with exactly no support in precedent existing at the time. *Pirelli*, 534 F.3d at 786. The other district court cases on which plaintiffs rely (Pl. Br. 17-19) all involve the same flawed reasoning.

The text, history, and sound judicial constructions of the Fannie Mae charter provision all make clear that it creates federal jurisdiction over this action and therefore supports its removal.

II. THIS COURT SHOULD AFFIRM BECAUSE ITS PRIOR ORDER SUMMARILY AFFIRMING THE DISTRICT COURT'S DECISIONS IN THIS CASE IS "LAW OF THE CASE"

In this appeal, plaintiffs ask this Court to review the district court's order dismissing their claims and denying their Rule 60(b) motion. Plaintiffs have previously asked this Court to review orders resolving the exact same issues, and this Court has already rejected plaintiffs' arguments on the merits. This Court's prior order is "law of the case," and there is no reason for this Court to disturb its ruling now.

The "law of the case doctrine" is designed "to promote the efficient operation of the courts." *Hall v. City of L.A.*, 697 F.3d 1059, 1067 (9th Cir. 2012). "It generally precludes a court from reconsidering an issue decided previously [either explicitly or by necessary implication] by the same court or by a higher court in the identical case." *Id.* Thus, under the "law of the case" doctrine, "one panel of an appellate court will not as a general rule reconsider questions which another panel has decided on a prior appeal in the same case.'" *Hegler v. Borg*, 50 F.3d 1472, 1475 (9th Cir. 1995) (quoting *Merritt v. Mackey*, 932 F.2d 1317, 1320 (9th Cir. 1991)). Although the doctrine is discretionary, this Court has observed that "a prior decision should be followed unless (1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3)

substantially different evidence was adduced at a subsequent trial." *Id.*

Law of the case doctrine plainly applies here. In 2003, plaintiffs appealed the district court's orders dismissing their claims against Cendant, Fannie Mae, and Mathews on res judicata grounds and denying their first Rule 60(b) motion. This Court "summarily affirm[ed] the district court's orders," concluding that "[a] review of the record and appellant's response indicates that the questions raised in this appeal are so insubstantial as not to require further argument." SER-8. Although this Court did not discuss the reasons for its decision, it necessarily held that the district court properly dismissed plaintiffs' claims on res judicata grounds, and that none of the "new" evidence in plaintiffs' Rule 60(b) motion (which they repeat here) merited a change in the result. These are the precise questions at issue in this appeal, and there is no reason for this Court to answer them differently now than it did nearly a decade ago.

III. THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFFS' CLAIMS ON RES JUDICATA GROUNDS

This Court's prior order is not just law of the case, it is legally correct: plaintiffs' claims are barred by res judicata. Just as plaintiffs now seek to re-litigate issues previously litigated and decided, this entire suit was simply an attempt to re-litigate in state court claims that had already been litigated and rejected in federal court.

Res judicata "'bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action.'" *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (quoting *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997)). "The doctrine is applicable whenever there is '(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties.'" *Id.* As the district court held, all three criteria are satisfied here.

First, to determine whether there is an "identity of claims," this Court considers four factors: "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts." *Turtle Island Restoration Network v. U.S. Dep't of State*, 673

F.3d 914, 917-18 (9th Cir. 2012). The "'most important'" of these factors is the fourth, *id.* at 918, and the inquiry is "essentially the same as whether the claim could have been brought in the first action." *United States v. Liquidators of European Fed. Credit Bank*, 630 F.3d 1139, 1151 (9th Cir. 2011); *see Turtle Island*, 673 F.3d at 918 ("where claims arise from the same factual circumstances, a plaintiff must bring all related claims together or forfeit the opportunity to bring any omitted claim in a subsequent proceeding").

Here, plaintiffs' claims not only *could* have been brought in the prior action, they *were* brought in that action. In this case, just as in the previous two, plaintiffs "challenge[d] Defendants' conduct in connection with the process of Arrington's loan application and the eventual foreclosure of residential property.... Plaintiffs' claims allege that the conduct of the defendants in processing the loan and the foreclosure sale were improper and invalid." OER 1:33 (DE 59, at 8); *see id.* (the "same rights and interests are at issue in the instant case as were adjudicated in the previous actions").[8] Thus, the "identity of claims" factors are readily satisfied: the two suits arise out of the same nucleus of facts and involve infringement of

[8] Plaintiffs did allege new causes of action and added the additional factual allegation that Cendant "improperly substituted a trustee before the foreclosure sale" (OER 1:33 & nn.4-5 (DE 59, at 8 & nn.4-5)), but plaintiffs offer no reason to think that those additions meaningfully changed the complaint, or could not have been brought in the prior actions.

the same right, and defendants' interests in the finality of the prior litigation would be impaired by this action.

Second, there was a final judgment on the merits. Final judgment on the merits is "synonymous" with "dismissal with prejudice." *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005). And a "dismissal for failure to state a claim under Rule 12(b)(6) is a 'judgment on the merits' to which res judicata applies." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002). In the second action, the district court dismissed Hollis-Arrington's claims against all defendants as a matter of law or for failure to state a claim, and this Court affirmed the district court's decision. *See* SER-1 (entry of judgment); SER-2-6 (judgment and memorandum affirming district court). That dismissal is a judgment on the merits.

Third, there was identity or privity between the parties. "'Privity'—for purposes of applying the doctrine of res judicata—is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" *United States v. Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997). "[W]hen two parties are so closely aligned in interest that one is the virtual representative of the other, a claim by or against one will serve to bar the same claim by or against the other." *Irwin v. Mascott*, 370 F.3d 924, 929 (9th Cir. 2004) (quotation omitted).

Because Fannie Mae and Hollis-Arrington were parties to the prior proceedings, the only privity question is whether Crystal Lightfoot was in privity with Hollis-Arrington. She was: she is Hollis-Arrington's daughter, resided in the home that is the subject of this dispute, was temporarily the owner of the property, and her interests in the litigation are precisely the same as her mother's. That relationship easily suffices to establish privity. *See Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir. 1996) (privity existed between woman and her grandmother where the "interests of [the woman] and her grandmother are so similar that [the woman's] grandmother virtually represented [her] in [the prior action]").

Because all three elements of res judicata exist here, the district court properly dismissed plaintiffs' claims on res judicata grounds, as this Court previously recognized.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFFS' RULE 60(b) MOTION

This Court should also affirm the district court's denial of plaintiffs' Rule 60(b) motion because it is yet another attempt to re-litigate issues that have already been litigated and decided multiple times over. Under Federal Rule of Civil Procedure 60(b), "the court may relieve a party or its legal representative from a final judgment, order, or proceeding" where, under Rule 60(b)(2), there is "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial"

or, under Rule 60(b)(3), there is "fraud ... misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(2), (3). "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order of the date of the proceeding." *Id.* R. 60(c)(1). District courts "lack discretion to bend the one-year limit." *McKnight v. Neven*, 366 F. App'x 841, 843 (9th Cir. 2010); *see Warren v. Garvin*, 219 F.3d 111, 114 (2d Cir. 2000) ("[t]he limitations period [in Rule 60] is 'absolute'" (quoting 12 James Wm. Moore et al., Moore's Federal Practice § 60.65[2][a], at 60-200 (3d ed. 1997)).

To prevail under Rule 60(b)(2), the moving party must show that the "newly discovered" evidence was not in its "possession at the time of trial" and could not have been "discovered with reasonable diligence," and that the "newly discovered" evidence would likely have changed the outcome of the case. *Coastal Transfer Co. v. Toyota Motor Sales*, U.S.A., 833 F.2d 208, 212 (9th Cir. 1987). To prevail under Rule 60(b)(3), the moving party must "'prove by clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct and the conduct complained of prevented the losing party from fully and fairly presenting the defense.'" *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (quoting *De Saracho v. Custom Food Mach.*, Inc., 206 F.3d 874, 880 (9th Cir. 2000)). The fraud must "not be discoverable by due diligence before or during the proceeding" and must be "materially related to the submitted issue." *Pac. &*

Arctic Ry. & Navigation Co. v. United Transp. Union, 952 F.2d 1144, 1148 (9th Cir. 1991).

Here, plaintiffs' request for Rule 60 relief fails both because it is untimely and because plaintiffs have failed to satisfy the requirements of either Rule 60(b)(2) or (3).

A. The District Court Properly Held That Plaintiffs' Rule 60(b) Motion Was Untimely

As noted above, a motion under either Rule 60(b)(2) or (3) must be made within a "reasonable time" and, in any event, no later than "a year after the entry of the judgment or order of the date of the proceeding." Fed. R. Civ. P. 60(c). "'What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties.'" *Lemoge v. United States*, 587 F.3d 1188, 1196-97 (9th Cir. 2009) (quotation omitted).

Here, the district court granted Fannie Mae's motion to dismiss on February 20, 2003. Plaintiffs did not file this motion until June 11, 2010—over seven years later. That delay was unreasonable, to say the least. As the district court noted, plaintiffs could have filed many years earlier because "the documents are public records and Plaintiffs presented the same facts to the Court more than seven years ago." OER 1:94 (DE 117, at 8). Moreover, given that this Court already affirmed the district court's motion to dismiss,

defendants had every reason to rely on the finality of that decision. Plaintiffs have offered no reason to disrupt that finality now. Indeed, plaintiffs' only argument on appeal was that the Rule 60(b) motion was filed within one year of judgment. Pls. Original Br. 17 ("Adjudication of Attorneys Equity (for the purpose of a rule 60(b) motion) was not complete until 6/11/2010. It was that judgment which was tantamount to final adjudication of this case. Appellants rule 60(b) motion was filed on 9/17/2010, well within the one year time frame to consider the motion as timely."). But even if that were right,[9] it provides no excuse for plaintiffs' failure to file within a reasonable time. "The one-year period represents an extreme

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[9] The district court held that it was not right and that it "lack[ed] jurisdiction" to consider the motion "due to the expiration of the one-year time period." OER 1:93 (DE 117, at 7). As the court explained, "[b]ecause the parties treated the order of dismissal as a judgment, the Court finds that, for purposes of Rule 60(b)(3), judgment was entered as to these defendants on July 21, 2003, which was 150 days from the date of entry of the February 20, 2003 order of dismissal. Therefore, Plaintiffs should have sought relief for alleged fraud committed by Defendants in procuring the dismissal of the action by July 21, 2004, which was one year from the date on which the judgment would have been entered pursuant to Federal Rule of Civil Procedure 58." *Id.* (internal citation omitted). This Court need not decide whether plaintiffs' motion was filed outside the one-year time period because either way, the delay was completely unreasonable. *Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation ("C.N.A.N.")*, 605 F.2d 648, 656 (2d Cir. 1979) ("Although Judge Tenney was incorrect in his determination that the Rule 60(b)(1) motion was filed over a year after judgment, his ultimate holding that the motion was untimely can be founded upon the alternative requirement that motions under the Rule be made within 'a reasonable time.'"

limit, and the motion will be rejected as untimely if not made within a 'reasonable time' even though the one-year period has not expired." Federal Practice & Procedure § 2866. Plaintiffs' motion was exceedingly untimely, and that is alone sufficient basis to affirm the district court's decision.

B. The District Court Did Not Abuse Its Discretion When It Denied Plaintiffs' Rule 60(b) Motion

As noted above, to satisfy the requirements of Rule 60(b), the moving party must present new evidence that could not have been discovered prior to the entry of judgment and that would likely change the outcome of the case. Here, plaintiffs failed to make that showing. Indeed, as the district court explained, plaintiffs previously filed a motion to set aside the judgment based on the same evidence identified in this motion. OER 1:94 (DE 117, at 8). Even at that time, the district court concluded that the evidence on which plaintiffs relied "could have been discovered through the exercise of diligence prior to the entry of judgment." *Id.* at 50 (DE 79, at 50). "The documents are public recordations available to members of the public that seek their production. Additionally, plaintiffs' own submission of the documents as printouts from Lexis-Nexis indicate that, prior to entry of judgment in this proceeding, plaintiff could have obtained copies of these documents." *Id.* In fact, according to the district court, plaintiff "had this information since the filing of [the] case." *Id.* at 50 n.1 (DE 79, at 50 n.1).

The district court also held that "production of the alleged new evidence would not have changed the outcome of the case." *Id.* at 94 (DE 117, at 8); *see id.* at 50-51 (DE 79, at 50-51) ("the Court finds that production of these documents would not have changed the Court's finding that defendants were entitled to dismissal of plaintiff's claims in this action"). Indeed, plaintiffs do not meaningfully argue otherwise in either their original brief or their supplemental brief. *See, e.g., Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) ("Issues raised in a brief that are not supported by argument are deemed abandoned.").

This Court affirmed the district court's denial of plaintiffs' first Rule 60(b) motion nearly ten years ago. SER-7-8. It should affirm the denial of this one now.

CONCLUSION

For the foregoing reasons, the judgment should be affirmed.

Respectfully submitted,

/s/ Jonathan D. Hacker

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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, defendant Federal National Mortgage

Association states that it is aware of the following related cases that are now pending or were pending in this Court, in addition to those previously identified by plaintiffs:

1. *Hollis-Arrington v. Cendant Mortg.*, No. 02-56279 (same transactions)

2. *Hollis-Arrington v. Cendant Mortg.*, No. 02-56280 (same transactions)

3. *Lightfoot v. U.S. District Court for Central California*, No. 09-74079 (same district court case)

4. *Hollis-Arrington v. Cendant Mortg.*, No. 10-56651 (same transactions)

Dated: February 4, 2013

/s/ Jonathan D. Hacker
Jonathan D. Hacker